LAW OFFICE
1322 WEBSTER STREET
OAKLAND 12, CALIFORNIA

LEGISLATIVE ADDRESS
STATE CAPITOL
SACRAMENTO 14

COMMITTEES
CRIMINAL PROCEDURE
ELECTIONS AND
REAPPORTIONMENT
REVENUE AND TAXATION
TRANSPORTATION AND
COMMERCE

Assembly
California Legislature

NICHOLAS C. PETRIS
MEMBER OF ASSEMBLY, FIFTEENTH DISTRICT
VICE CHAIRMAN
COMMITTEE ON CRIMINAL PROCEDURE

June 1, 1959

REPORT OF SUB-COMMITTEE ON NARCOTICS

TO: Hon. John A. O'Connell, Chairman
Assembly Committee on Criminal Procedure

Your Sub-Committee on Narcotics Penalties, after due consideration extending over a period of five meetings, respectfully makes the following recommendations:

1. That the following Assembly Bills be referred to the Rules Committee for assignment to appropriate committee for interim study:

28 (Crawford) 119 (Dills) 271 (Francis)
486 (Lanterman) 1185 (Francis) 202 (Allen)
(Aye 63 to 4)

2. That the following Assembly Bills be given a "Do Pass":

1801 (Bruce Allen) and 2129 (Waldie)

3. That both marijuana and heroin be re-classified and clearly defined as illegal drugs through appropriate amendment as recommended by Assemblyman Lanterman.

4. That the Health & Safety Code be amended to prevent the striking of prior narcotics convictions by the Court except on motion of the District Attorney. The following amendment proposed by Assemblyman Allen is recommended:

Section 11718 is added to the Health and Safety Code to read:

11718. In any criminal proceeding for violation of any provision of this division no allegation of fact which, if admitted or found to be true, would change the penalty for the offense charged from what the penalty would be if such fact were not alleged and admitted or proved to be true may be dismissed by the court or stricken from the accusatory pleading except upon motion of the district attorney.

5. That Section 11713 of the Health and Safety Code be amended to insert the following:

11713. Any person convicted under this division for transporting, selling, furnishing, administering, or giving away, or offering to transport, sell, furnish, administer, or give away, any narcotics, shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison from five years to life; provided, that following conviction if the court finds that the convicted person is addicted to the use of narcotics, the court may suspend the execution of such a sentence on condition that the convicted person serve a term of not less than 90 days or more than one year in the county jail and hereafter be placed on probation for a period of not less than two years nor more than five years subject to the conditions contained in Section 11722 of this code.

6. That all members of the committee support and strongly urge the passage of AB 321 (Rumford) which was not assigned to the sub-committee nor heard by the full committee but which was repeatedly referred to in testimony. The effect of this bill is to make the Nalline program available to all counties which desire to participate. (See further comments below.)

7. That full support be given to the Attorney General's new program for expanding the work of the Bureau of Criminal Statistics of the Department of Justice in order to compile complete and accurate information about narcotics offenses in California. This will open up many areas now hidden from view. For example, half of California's heroin addicts who are now in prison were actually convicted of offenses other than narcotics. Information is not available for study as to their addiction background.

8. That full support be given to the new pilot project in Chino made possible by the enactment of SB 155 (Beard) in the current session of the legislature. Its purpose is to prevent the re-addiction of offenders and thereby reduce the narcotics traffic. This nine month study will also attempt swift detection of relapses by former addicts on parole and cut down on return of parolees to prison. It is hoped that most offenders would recover sufficiently through intensive parole supervision and outpatient treatment while safely employed in their home communities. This type of supervision would cost $400 per year per man compared to $1600 per year for incarceration. Thus the taxpayers would save $1200 per year per person.

9. That no further changes be made at the present time in the direction of mandatory or increased penalties. The Sub-Committee feels that the new positive programs now in operation should be given an opportunity. These were not in effect during the last session of the legislature. All of the programs outlined above will have a bearing on the narcotics problem in California. It is hoped that their cumulative effect will be to materially reduce the traffic.

The Sub-Committee's scope was limited to measures involving penalties. It did not consider the problems of the exclusionary rules of evidence or of search and seizure involved in the apprehension

and prosecution of narcotics offenders. This is a subject of separate study by the full committee.

The issue of requiring more severe penalties is clouded by lack of clear and convincing information. Does the answer to the narcotics problem lie in longer prison terms?

Federal law and the statutes of Ohio, Oklahoma, and Louisiana were cited by the proponents to demonstrate that tougher laws either deter peddlers or drive them out of state. Their statistics were challenged as fragmentary, vague, and in some cases actually misleading. (For example compare GRAPHIC RESULTS OF MANDATORY PENALTIES AGAINST PEDDLERS, Federal Bureau of Narcotics, Treasury Department, Washington, D. C., December 31, 1958 with NARCOTICS IN CALIFORNIA, "Some Important Facts".)

Few states (California included) provide accurate distinctions between various types of narcotics offenses in reporting convictions. This results in serious limitations and inaccuracies which are compounded by broad generalizations.

The reluctance, even among law enforcement officials, to press for more severe penalties, is due to the fact prosecutions and convictions are more difficult to obtain, particularly when more youthful offenders are involved. District Attorneys, courts and juries are hesitant about "throwing the book" at a youthful defendant, particularly if it involves a first offense and there are some mitigating circumstances. This was confirmed partially by a report presented by Mr. Wallace Howland, Deputy Attorney General, who solicited information from other jurisdictions at the request of the Sub-Committee Chairman.

He read a report from Louisiana, a stiffer penalties state, which acknowledged that the greatest increase in convictions under the new statues was in the lesser included offense provisions because of lower penalties. It cited the reluctance of juries as well as courts and prosecutors to use the harsher provisions.

At the first hearing of the full committee in its consideration of AB 119 (Dills) even the District Attorneys and Peace Officers Association indicated it was opposed to a mandatory 30 year sentence. At subsequent hearings of the Sub-Committee this Association urged the committee to stop the alleged "revolving door" policy of some courts by prohibiting the striking of prior convictions for second and subsequent offenses except on motion of the district attorney. The Association took no stand on mandatory or increased penalties.

Federal statistics were cited to show better results in prosecution under the more severe punishments provided by Congress. Yet California statistics show longer average prison terms for narcotics offenders than the Federal records. It is admitted that the California figures are limited to state prison terms and do not include county level sentences of which it is claimed there are too

many in Los Angeles. On the other hand it was shown that the Federal agents in California normally do not even bother with Marijuana cases but concentrate on heroin and other more serious and harmful cases. It was pointed out further by Dr. Lamont Smith, Executive Officer for the State Board of Corrections that Federal tables showing number of arrests were being compared to California convictions. Again in many instances the Sub-Committee was frustrated by fragmentary information and the comparison of experiences in different jurisdictions with unlike quantities.

The Nalline Program in Oakland has, since it began in 1956 and particularly during the past two years, resulted in the most striking reduction in narcotics addiction and traffic. The Oakland experience has been that addicts who are convicted of other offenses willingly accept the Nalline program as a condition of probation. They are required to report periodically (usually once per week) for an injection which positively betrays the user through dilation of the eye pupil. The Oakland Police Department reports that it doesn't take long for addicts to be convinced that the test is foolproof. This provides them with the greatest crutch in resisting narcotics for they know re-use will be detected and imprisonment will follow.

The distinction between speedy revocation of probation and lengthy trials impresses the addict. He KNOWS that he will wind up in prison almost immediately. This has had a great detering effect. This knowledge in turn is communicated to former associates. Their fear of apprehension and similar control, plus the sharp depressions in the narcotics market causes the others to leave the market area--in this case Alameda County--for other parts of the state. As Nalline is extended throughout California it is hoped and predicted by law enforcement officials that the pushers will be driven out of the state.

In Oakland the cost has averaged about 25¢ per injection of Nalline. This is paid for many times over by the reduction in the ancillary crime rate, to say nothing of the savings and benefit to society in returning these persons to useful and productive occupations.

We commend the Oakland Police Department for its outstanding contribution to the fight against narcotics through its pioneer development of the Nalline program.

Respectfully submitted
Sub-Committee on Narcotics Penalties
Assembly Committee on Criminal Procedure

NICHOLAS C. PETRIS, Chairman

BRUCE F. ALLEN

PHILLIP BURTON

February 15, 1960

Honorable Board of Supervisors
501 Hall of Records
Los Angeles 12, California

Re: Joint report and recommendations of the District Attorney, Sheriff, Probation Officer and County Counsel on amendments to the State Narcotic Law

Gentlemen:

Responsive to the increasing alarm of the public respecting the evils of narcotics, your Honorable Board on November 24, 1959, specifically instructed the District Attorney, Sheriff and County Counsel to confer for the purpose of developing stronger and more adequate amendments to the State Narcotic Law to be introduced, if possible, at a special session of the California Legislature. By subsequent order of your Board, the County Probation Officer was included in these meetings.

In a prior order on October 13, 1959, the Board of Supervisors unanimously requested Governor Edmund G. Brown to include in the Agenda for a special session "a proposal for the passage of a stronger narcotic enforcement law * * *"

Pursuant to these orders, District Attorney William McKesson, Chief Deputy District Attorney Manley Bowler, Sheriff Peter Pitchess, Chief Fred Fimbres of the Sheriff's Department, County Probation Officer Karl Holton, County Counsel Harold W. Kennedy and members of his staff have conferred on this problem. These officers and members of their staffs also attended the hearings of the Senate Committee on Judiciary held in Los Angeles on December 7 and 8, 1959, to investigate the subject of penalties for narcotic offenses.

After a series of conferences attended personally by all of the County Officers designated by the Board it was agreed that there were two basic problems involved: (1) The need to obtain additional legislation which would

permit law enforcement officers to obtain convictions in narcotic offense cases which they are unable to obtain presently by reason of judicial decisions which restrict their activities in obtaining evidence to prove violations of the State Narcotic Law. Such legislation is deemed essential by virtue of rulings of the Supreme Court of California as set forth in People vs. Cahan, 44 Cal. 2d, 434 (1955) and Priestly vs. Superior Court, 50 Cal. 2d, 812 (1958). (2) The other problem involves the need to strengthen the penalties to be imposed on those convicted of violations of the State Narcotic Law. In this regard in keeping with the specific instructions of your Honorable Body your County Officers have developed a stronger anti-narcotic program to be introduced at the next session of the California Legislature where it can be considered.

The proposed addition of Section 11689 to the Health and Safety Code which is offered for the purpose of removing the restrictions placed on law enforcement officers and prosecutors by court decisions relates only to the admission of evidence in narcotic cases and does not affect the substantive prohibition against wire tapping set forth in Penal Code Section 640.

Any persons who obtained evidence by wire tapping in violation of Penal Code Section 640 would still be subject to being prosecuted criminally for their acts.

During the discussion of the measure respecting increasing the penalties, 18 separate situations were considered, all as outlined in the attached chart which is interpretive of the draft amending sections of the Health and Safety Code relating to penalties. (Sections 11511, 11501, 11502, 11530, 11531 and 11532) The fixing of penalties involves the establishment of the length of sentence, applicability of probation and parole, and the imposition of fines. Because of the complicated nature of the whole narcotics problem involving its physiological, psychological, medical, law enforcement and custodial phases there was not unanimous agreement on every single point on the part of the District Attorney, Sheriff, Probation Officer and the County Counsel. Specifically, varied views were expressed by your County Officers as to exactly what penalties should be imposed in some cases. However, all recognized that some form of stronger narcotic control legislation

is imperative and must be submitted to the legislature at the earliest possible time.

In recognition of the above the attached amendments to the Health and Safety Code have been prepared and are submitted herewith and as a general program carry the recommendations of the County Officers whose signatures are attached to this report.

In addition, all of the undersigned strongly support the unanimous action heretofore taken by the Board of Supervisors on October 13, 1959, requesting the Governor to include in the special session call the subject of narcotics. Also submitted herewith as a part of this report is a chart interpreting and summarizing amendments respecting penalties and comparing them with the present law and the provisions of the Dills Bill (AB 2727) considered by the California Legislature at the 1959 Session.

Respectfully submitted,

/s/ William B. McKesson
WILLIAM B. McKESSON
District Attorney

/s/ Peter Pitchess
PETER PITCHESS
Sheriff

/s/ Karl Holton
KARL HOLTON
Probation Officer

/s/ Harold W. Kennedy
HAROLD W. KENNEDY
County Counsel

HWK:mf
cc: Each Board Member
C.A.O.

REPORT OF DISTRICT ATTORNEY, SHERIFF, PROBATION OFFICER AND COUNTY COUNSEL ON AMENDMENTS TO STATE NARCOTICS LAW.

Offense	First Offense			Second Offense		
	Present Law	Proposed Law	A.B. 2727	Present Law	Proposed Law	A.B. 2727
Narcotics Other than Marijuana Possession (H.& S. Code Sec. 11500)	County Jail not more than one year or State Prison not more than ten years. (Eligible for parole in six months). present min. guide-same 2 years	State Prison not less than two years nor more than ten years. (Not eligible for parole or release on any basis until minimum term of two years served).	Not included	State Prison two to twenty years. (Eligible for parole in eight months).	State Prison not less than five nor more than twenty years. (Not eligible for parole or release on any basis until minimum term of five years served.) Third Offense and Subsequent. State Prison fifteen years to life. (Not eligible for parole or release on any basis until minimum term of 15 years served.)	Not included
Transportation, sale, furnishing, etc. (H.&S. Code Sec. 11501) 2m guide same	County Jail not more than one year or State Prison five years to life. (Eligible for parole in 20 months).	State Prison five years to life. (Not eligible for parole or release on any basis until three years served).	State Prison five to thirty years. (Eligible for parole in twenty months).	State Prison ten years to life. (Eligible for parole after 3 years 4 months).	State Prison ten years to life. (Not eligible for parole or release on any basis until minimum term of ten years served. Third Offense and Subsequent. State Prison 15 years to life. (Not eligible for parole or release on any basis until minimum term of 15 years served).	State Prison ten to forty years. (Eligible for parole in 3 years, 4 months).
Furnishing to Minors (H.& S. Code Sec. 11502). min. guide 3 years	State Prison not less than five years. (Eligible for parole in 20 months).	State Prison ten years to life. Not eligible for parole or release on any basis until 5 years served.	(Heroin) State Prison 10 years to life. (Eligible for parole in 10 years).	State Prison not less than ten years. (Eligible for parole in 3 years 4 months).	State Prison 10 years to life. (Not eligible for parole or release on any basis until minimum term of 10 years served. Third Offense and Subsequent. (State Prison 15 years to life. (Not eligible for parole or release on any basis until minimum term of 15 years served).	(Heroin) Same as first offense

Offense	First Offense			Second Offense		
	Present Law	Proposed Law	A.B. 2727	Present Law	Proposed Law	A.B. 2727
Marijuana. Possession or Cultivation (H.& S. Code Sec. 11530).	County Jail not more than one year or State Prison not more than ten years. (Eligible for parole in six months). min. guide 2 years	State Prison not less than one year nor more than ten years. (Not eligible for parole or release on any basis until minimum term of one year served).	Not included	State Prison two to twenty years. (Eligible for parole in eight months).	State Prison two to twenty years. (Not eligible for parole or release on any basis until minimum term of two years served). Third Offense and Subsequent. State Prison five years to life. (Not eligible for parole or release on any basis until minimum term of five years served).	Not included
Transportation, sale, furnishing, etc. (H.& S. Code Sec. 11531). min. guide same	County Jail not more than one year or State Prison five years to life. (Eligible for parole in twenty months).	State Prison five years to life. (Not eligible for parole or release on any basis until three years served).	State Prison five to thirty years. (Eligible for parole in twenty months).	State Prison ten years to life. (Eligible for parole in three years four months).	State Prison five years to life. (Not eligible for parole or release on any basis until minimum term of five years served). Third Offense and Subsequent. State Prison ten years to life. (Not eligible for parole or release on any basis until minimum term of ten years served).	State Prison ten to forty years. (Eligible for parole in three years, four months).
Furnishing to Minors (H.& S. Code Sec. 11532). min. guide 3 years	State Prison not less than five years. (Eligible for parole in twenty months).	State Prison ten years to life. (Not eligible for parole or release on any basis until five years served).	(Narcotics other than heroin). State Prison ten to forty years. (Eligible for parole in three years four months).	State Prison not less than ten years. (Eligible for parole in three years four months).	State Prison ten years to life. (Not eligible for parole or release on any basis until minimum term of ten years served). Third Offense and Subsequent. State Prison fifteen years to life. (Not eligible for parole or release on any basis until minimum term of 15 years served.)	(Narcotics other than Heroin) Same as first offense.

1. Court may add a fine up to $20,000 in any case.

2. No probation following second or subsequent conviction in any case, and no probation on first conviction of furnishing any narcotics to minors.

An act to add Section 11689 to the Health and Safety Code, relating to evidence in criminal actions and proceedings involving narcotic laws.

The people of the State of California do enact as follows:

Section 1. Section 11689 is added to the Health and Safety Code, to read:

11689. In any criminal action or other proceeding commenced to enforce provisions of this division, all relevant and material evidence not otherwise privileged, shall be admissible. No evidence shall be excluded because of the manner in which it was obtained. Nothing in this section shall be construed to limit the right of any person to seek and obtain redress for any injury to his person or property or for the infringement of any of his rights.

RCL:mg
1/21/60

An act amending Sections 11500, 11501, 11502, 11530, 11531, 11532 and 11715.6 of the Health and Safety Code, and adding Section 11715.8 to the Health and Safety Code, relating to narcotics.

The people of the State of California do enact as follows:

Section 1. Section 11500 of the Health and Safety Code is amended to read:

11500. Except as otherwise provided in this division, every person who possesses any narcotic other than marijuana except upon the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this State, shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison for not less than two years nor more than 10 years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than two years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court

trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than ~~two~~ five years nor more than 20 years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

Sec. 2. Section 11501 of the Health and Safety Code is amended to read:

11501. Except as otherwise provided in this division, every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell,

furnish, administer, or give away, or attempts to import into this State or transport any narcotic other than marijuana except upon the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this State shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison from five years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than three years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 10 years in prison.

If such a person has been previously two or more times convicted of any offense described in this division

or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

Sec. 3. Section 11502 of the Health and Safety Code is amended to read:

11502. Every person who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that said minor shall violate any provision of this division, or who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale or peddling any narcotic other than marijuana or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any narcotic other than marijuana to a minor shall be punished by imprisonment in the state prison ~~not less than five years~~ from 10

years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison ~~for not less than~~ from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 10 years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment

or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

SEC. 4. Section 11530 of the Health and Safety Code is amended to read:

11530. Every person who plants, cultivates, harvests, dries, or processes any marijuana, or any part thereof, or who possesses any marijuana, except as otherwise provided by law, shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison for not less than one year nor more than 10 years and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than one year in prison.

If such person has been previously once convicted of any offense described in this division or has been previously convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than two years nor more than 20 years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than two years in prison.

If such person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the State Prison for five years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

SEC. 5 Section 11531 of the Health and Safety Code is amended to read:

11531. Every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell, furnish, administer, or give away, or attempts to import into this State or transport any marijuana shall be punished by imprisonment ~~in the county jail for not more than one year; or~~ in the state prison from five years to life and shall not be eligible for

release upon completion of sentence, or on parole, or on any other basis until he has served not less than three years.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from ~~10~~ 5 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions

shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in a state prison from ten years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than ten years in prison.

SEC. 6. Section 11532 of the Health and Safety Code is amended to read:

11532. Every person who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale or peddling any marijuana, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any marijuana to a minor, is guilty of a felony punishable by imprisonment in the state prison ~~for not less than five~~ from ten years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the

laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison ~~for not less than~~ from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than ten years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life and shall not be eligible for release upon completion

of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

SEC. 7. Section 11715.6 of the Health and Safety Code is amended to read:

11715.6. In no case shall any person convicted of violating Sections 11500, 11501, 11502, 11503, 11530, 11531, 11532, 11540, 11557, or 11715, or of comitting any offense referred to in those sections, be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court, if such person has been previously convicted of any offense described in this division except Section 11721, or has been previously convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division except Section 11721.

In no case shall any person convicted for the first time of violating Section 11502 or Section 11532, or of committing any offense referred to in those sections, be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

SEC. 8. Section 11715.8 is added to the Health and Safety Code to read:

11715.8. In addition to the term of imprisonment provided by law for persons convicted of violating Sections 11500, 11501, 11502, 11530, 11531 and 11532 of this Code, the trial court may impose a fine not exceeding $20,000.00 for each such offense. In no event shall said fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of said offenses.

LOS ANGELES COUNTY LEGISLATIVE OFFICE
STATE BUILDING
LOS ANGELES 12, CALIFORNIA
TELEPHONE: MADISON 6-1515

LAW OFFICES
SUITE 633, 433 S. SPRING STREET
LOS ANGELES 13, CALIFORNIA
TELEPHONE: MADISON 4-1411

SACRAMENTO ADDRESS
STATE CAPITOL
ZONE 14

RICHARD RICHARDS
THIRTY-EIGHTH SENATORIAL DISTRICT
LOS ANGELES COUNTY

COMMITTEES
TRANSPORTATION
VICE CHAIRMAN
JUDICIARY
LABOR
PUBLIC HEALTH AND SAFETY
WATER RESOURCES

CALIFORNIA LEGISLATURE

Senate

May 9, 1960

Mr. Arthur Alarcon
4919 Murietta Avenue
Sherman Oaks, California

Dear Mr. Alarcon:

Please accept my sincere congratulations on your selection by the Governor to serve as executive director to the new special Crime Commission on Narcotics.

Your background well qualifies you for this important position, and I feel sure that your contribution to this Commission will be a tremendous one.

I want to assure you that my office will cooperate with you in every way possible, and I hope you will not hesitate to call on us.

With all good wishes,

Sincerely,

Richard Richards

RICHARD RICHARDS
RR:es

California Legislature

Assembly Interim Committee on Criminal Procedure

ROOM 4110, STATE CAPITOL
SACRAMENTO 14, CALIFORNIA

JOHN A. O'CONNELL
CHAIRMAN

May 10, 1960

Mr. Arthur L. Alarcon,
Chief Trial Deputy
Los Angeles County District Attorney
Santa Monica Branch
1725 Main St.
Santa Monica, Calif.

Dear Mr. Alarcon:

We appreciate your attendance at the hearing of the Committee on Criminal Procedure in Los Angeles on May 5th.

I am sure that your contribution will add much to the ultimate success of our study in this field.

Sincerely,

John A. O'Connell

JOHN A. O'CONNELL

JAO:pk

California Legislature

Joint Committee on Legislative Organization

ROOM 3173, STATE CAPITOL
RICHARD T. HANNA
CHAIRMAN
GEORGE MILLER, JR.
VICE CHAIRMAN

July 27, 1960

Mr. Arthur Alarcon
Executive Secretary
Governor's Special Crime Committee
c/o Youth Authority
909 S. Broadway
Los Angeles, California.

Dear Mr. Alarcon:

This is in extension of our telephone conversation this date.

The Committee is desirous of obtaining background information on the narcotics problem from a viewpoint of the California Legislature. Under the Joint Rules, many of the events necessary to enact effective legislation must be passed upon by this Committee. These are mostly procedural matters and are not to be construed as interfering or overseeing any action which would properly come to the attention of any existing committee or committees which could be formed to study the situation.

Because of protocol, an informal dinner meeting is suggested for Saturday, August 20, 1960, possibly in Tijuana, details of which will be available later. At the meeting, besides a presentation from your Committee, it is expected to have representatives from Ambassador Hill's office and Mexican officials. A special invitation is being extended to Mr. Gene Sherman of the Los Angeles Times.

It is to be emphasized that the purpose of this effort is to cultivate understanding of the narcotics problem by this Committee. As you explained, Mr. Alarcon, it is too early in your program to make any recommendations, and am sincere in my belief the Members will understand this point. However, it does

provide an excellent opportunity for many of those directly concerned to talk together on the rare occasion of meeting in the San Diego area.

Your early advice in this matter will be appreciated.

Sincerely yours,

JOHN B. SAYLOR
Consultant
Assembly Rules Committee

c.c. Hon. Richard T. Hanna

JBS:pj

P.S. Delayed this until letter to Ambassador will was mailed, copy enclosed. Call me at the Capitol (Ext 2131) if you need further information.

July 29, 1960

The Honorable Robert C. Hill
American Ambassador
Mexico City, Mexico

My dear Mr. Ambassador:

During recent years in general and in the past two sessions of the Legislature in particular, the members of the above-named committee, who, as you may know, comprise the members of the Rules Committees of each house of our State Legislature, have had before them a number of resolutions addressed to the Federal Government on the question of narcotics control and other contraband goods at the Mexican border.

The general matter of these resolutions raises the problem of jurisdictional divisions between State, Federal, and international bodies, their operational policy within such jurisdiction and the possibilities and policies of cooperation between such jurisdictions.

As you no doubt know, a great deal of study and debate will be given to narcotics in our State Legislature and we are sure that there will be additional numbers of resolutions addressed to Congress and various agencies of the Federal Government. Our committees would like to become more conversant with these areas of the problem that fall within our province. It occurred to us that your knowledge of federal programs and your experience with the Mexican government would be of great assistance in providing the background that is so important to intelligently carry out our duties.

It is in this light, Mr. Ambassador, that we cordially invite you to meet with us on Saturday, August 20, 1960 at 10 A.M., at which time a seminar is planned to obtain a broad perspective of the present status of cooperative endeavor under

existing law and the possibilities of suggested programs for improved cooperation.

In addition to seeking your participation and the cooperation of your office, it would be greatly appreciated if you would indicate to us whether there would be any representative of the Mexican Government who might be willing to express his viewpoints. We have asked a representative of Governor Brown's office who is working with the recently appointed Mexican Commission to join our seminar as well as Mr. Dana Bartlett of the Los Angeles Times. We hasten to assure you, however, that it is not contemplated that this meeting will be broadly publicized but informational and educational in nature.

We hope that you will be able to cooperate with us in this endeavor and look forward to having an expression of your participation in the matter, and remain

Yours sincerely,

RICHARD T. HANNA

RTH/mm

J. F. COAKLEY
DISTRICT ATTORNEY

OFFICE OF
DISTRICT ATTORNEY
OF
ALAMEDA COUNTY
CITY OF OAKLAND OFFICE
ROOM 216-CITY HALL
OAKLAND 12, CALIFORNIA
TEMPLEBAR 2-3600

R. ROBERT HUNTER
CHIEF ASSISTANT

December 6, 1960

Mr. Arthur L. Alarcon, Project Director
California Special Study Commission on Narcotics
909 South Broadway, Room 200
Los Angeles, California

Dear Mr. Alarcon:

Enclosed herewith are several copies of the proposals affecting Narcotic Law enforcement which are to be proposed at the next session by the District Attorney's Association and Peace Officers Association. These proposals are in preliminary form and may be subject to some changes at the meeting of the joint Legislative Committee of these two organizations in Los Angeles on December 8th and 9th, 1960. They will also be discussed at the California Narcotic Officers Association meeting in Palm Springs on the same date.

We shall appreciate the opportunity to discuss these proposals with your commission prior to their introduction.

Very truly yours,

J. F. COAKLEY
District Attorney

Albert E. Hederman Jr

By Albert E. Hederman, Jr.
Assistant District Attorney

aehd/
enc.

EXCLUSIONARY RULE IN NARCOTIC CASES

DRAFT OF PROPOSED LEGISLATION

An act to add Section 11689 to the Health and Safety Code, relating to evidence in criminal actions and proceedings involving narcotic laws.

The people of the State of California do enact as follows:

SECTION 1. Section 11689 is added to the Health and Safety Code to read:

> 11689. In any criminal action or other proceedings commenced to enforce provisions of this division, all competent, relevant and material evidence not otherwise privileged, shall be admissible. No evidence shall be excluded because of the manner in which it was obtained. Nothing in this section shall be construed to limit the right of any person to seek and obtain redress for any injury to his person or property or for the infringement of any of his rights.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

This measure is an addition to the Health and Safety Code which would make the rule of evidence established by the California Supreme Court in the case of People v. Cahan, 44 Cal. 2d 434 (1955) inapplicable to the prosecution of narcotic offenses set forth in Division 10 of that code. The Cahan decision held that evidence which is determined by the court to have been "obtained by unreasonable searches and seizures is inadmissible in criminal proceedings. The proposed measure would replace judicial pronouncement with Legislative policy and would provide that otherwise competent, relevant and material evidence would not be excluded solely on the basis of the manner in which it was obtained. The purpose of such legislation is to remove those restrictions which now prevent law enforcement officers from effectively investigating and prosecuting violations of the State Narcotic Law. This measure applies only to narcotic offenses and does not permit the admission of evidence which is not competent or trustworthy or which is obtained in violation of due process of law.

CONSTITUTIONALITY

The Legislative Counsel rendered an opinion on 20 March, 1960, (Opinion, "Senate Bill 728, 1959 Regular Session, Evidence in Narcotics Cases - 2683) that such a proposal would be

held constitutional. As construed by the Legislative Counsel, the measure makes admissible only certain types of evidence which are not rendered inadmissible by the due process clause.

The California Supreme Court stated in the Cahan case (People v. Cahan, 44 Cal.2d 434 at 442) that the exclusionary rule is a "judicially declared rule of evidence," which the Legislature is therefore free to change. Likewise the United States Supreme Court has held that the exclusionary rule is not based upon Constitutional requirement (Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L. Ed. 288) and that the states may determine their own rules on this subject (Irvine v. California, 347 U.S. 128, 74 S. Ct. 381, 98 L. Ed. 561.)

It should also be noted that the type of statute proposed here, abolishing the exclusionary rule for some types of cases but not others, has specifically been held constitutional by the U. S. Supreme Court (Salsburg v. Maryland, 346, U. S. 545, 74 S. Ct. 280, 98 L. Ed. 281.)

PRIOR LEGISLATIVE HISTORY

A similar bill (S.B. 728) was passed by the Senate at the 1959 Session of the Legislature and was referred to the Assembly Committee on Criminal Procedure. A motion to withdraw from Committee was unsuccessful and the bill was later referred for interim study.

DISCUSSION

The scope of the narcotic problem in California is demonstrated by the estimate of the California State Board of Corrections that in 1959 there were approximately 10,000 narcotic addicts in this state. During a recent year, a study of all male prisoners received by the State Prisons showed that one-third of these convicted felons were involved in some way with illicit drugs. A similar or higher percentage of women and Youth Authority prisoners sentenced to State correctional institutions were also users or traffickers in narcotics. These figures substantiate the report of the Federal Bureau of Narcotics that California contains the second largest addict population in the nation. Further, during the six-year period from 1954 through 1959, the number of persons arrested for narcotic offenses showed a 35% increase, ten per cent above the increase for all other major crimes.

Despite this alarming trend, law enforcement stands today severely hampered in its effort to carry out the duty of protecting the public from illegal drug traffic and narcotic-connected crime. The most pressing problem to police and prosecution personnel is the series of restrictions which have been placed upon them by court decisions on search and seizure and the right to use in court information received from informants. During the past few years tremendous strides forward have been made in the detection, treatment and control of narcotic addiction thru the use of the drug Nalline. Legislative proposals have been advanced

strengthening the penalties for narcotic offenders. Yet none of these programs can be successful unless the drug users and peddlers can first be apprehended and convicted.

The problem of obtaining evidence is particularly difficult in area of narcotics violations, which differ from other crimes in that there is no "victim" to report the crime to the police. Only through observation and questioning of known users and through "tips" received from informants can narcotic enforcement officers learn of the activities of illegal traffickers. Violators of the State Narcotic Law are highly mobile and very secretive. The nature of their operations makes detection extremely difficult and offers very limited opportunity for police officers to catch them with the evidence. To successfully apprehend such offenders and to obtain the evidence necessary for conviction, officers must move swiftly, often on short notice, and must take rapid action before the proof of illicit narcotic activity is moved or destroyed. The restrictions contained in the case of People v. Cahan, supra, and the subsequent cases on search and seizure make such swift and effective action virtually impossible.

The Sheriffs Department of Los Angeles County, in an area which is the focal point for narcotic traffic within this state, reports that during a one year period 27% of the narcotic cases, in which complaints were obtained and filed with the court, were dismissed by reason of the exclusionary rule. This occurred although in many of these cases substantial supplies of heroin and other narcotics had been found and the defendants themselves admitted using or selling narcotics. Other police departments report similar results and state that even more numerous than the dismissed cases are those arrests which cannot be made and those violations which cannot be prosecuted because of the judicial restrictions. Known narcotic offenders operate with practical immunity and admitted law breakers are set free because of this rule of evidence and its technical interpretations. It is interesting to note that since 1955, the year in which the Cahan decision was pronounced, the number of felony complaints in narcotic cases have decreased over 13% and the conviction rate has dropped 10%, although arrests have increased by more than 35%. (Reference: "Crime in California", Bureau of Criminal Statistics, California Department of Justice.) This demonstrates the profound effect of that decision upon narcotic enforcement.

The imposition of the exclusionary rule in California was a departure from those legal principals which have guided our courts since the beginning of their existence. The great majority of the states in our country and all of the British commonwealth have not established such judicial restrictions. As was stated by the United States Supreme Court in Irvine v. California, supra, "That the rule of exclusion and reversal results in the escape of guilty persons is more capable of demonstration than that it deters invasions of right by the police". While the exclusionary rule appears not to satisfactorily carry out its underlying purpose, it does effect the release of obviously guilty defendants on grounds

other than the quality and probative value of the evidence offered against them.

If there is to be adequate law enforcement in the field of narcotics, and if the public is to receive the degree of protection to which it is entitled, this legislation to remove the judicial restrictions and to allow law enforcement agencies to operate effectively against narcotic sellers and addicts is imperative.

This measure is endorsed by the District Attorneys Association, the Peace Officers Association and the California Narcotic Officers Association.

INTERCEPTION OF ELECTRONIC COMMUNICATIONS

DRAFT OF PROPOSED LEGISLATION

An act to amend 640, of, and to add Section 640.1 to, the Penal Code, relating to the detection or interception of telegraphic and telephonic communications.

The people of the State of California do enact as follows:

SECTION 1. Section 640 of the Penal Code is amended to read:

> 640. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, wilfully and fraudulently, or clandestinely taps, or makes any unauthorized connection with any telegraph or telephone wire, line, cable, or instrument under the control of any telegraph or telephone company; or who wilfully and fraudulently, or clandestinely, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any telegraph or telephone wire, line, or cable, or is being sent from, or received at any place within the State; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained; or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things hereinabove mentioned, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment; provided, that nothing herein shall prevent the interception and use of telegraphic or telephonic communications pursuant to the authority granted in Section 1543 of this Code.

SECTION 2. Section 1543 is added to the Penal Code, to read:

> 1543. (a) Upon written application by the Attorney General or a district attorney, a judge of the Superior Court or a Justice of the Supreme Court or the District Court of Appeal may issue an order authorizing the detection or interception of telegraphic or telephonic communications. Such order shall be issued only upon reasonable cause, supported by affidavit, to believe that evidence of the commission of a felony may thus be obtained.

(b) The judge or justice may, before issuing the order, examine on oath the person seeking the order and any witnesses he may produce, and must take his affidavit or their affidavits in writing and cause the same to be subscribed by the party or parties making the same.

(c) The affidavit or affidavits must set forth the facts showing reasonable cause to believe that evidence of the commission of a felony may thus be obtained and must specify the telegraph or telephone line involved, the number of the telephone, or such other description as is required to adequately and particularly identify the location where the detection or interception is to be made.

(d) If the judge or justice is thereupon satisfied of the sufficiency of the affidavit or affidavits and the existence of reasonable cause to believe that evidence of the commission of a felony may thus be obtained, he shall issue an order, signed by him with his name of office, directed to a peace officer, authorizing the interception or detection of such telegraphic or telephonic communication. The order shall specify the period of time during which it shall be effective, not to exceed sixty days, and shall further direct that any evidence obtained thereunder may be used only in the prosecution of a criminal cause, and that the same shall not be divulged in connection with any civil proceeding or for private use.

(e) The original order, together with the affidavits upon which it is based, shall be delivered to and retained by the applicant as authority for the detection or interception. A true copy of the order and affidavits shall be retained by the judge or justice issuing the same and shall not be open to public inspection. All information obtained pursuant to the order shall be reported to the judge or justice upon his request and to the Attorney General or district attorney who applied for the order upon his request.

(f) All information and evidence obtained pursuant to the order shall be admissible in any criminal proceeding involving the commission of a felony in accordance with the rules of evidence in criminal cases or before the grand jury, but shall not be used or disclosed in any civil proceeding or for private purposes, or for publication or for any other purpose not provided for in this section.

(g) Any person who obtains information by reason of the order and before such information becomes a public record discloses such information in a civil proceeding, for a private purpose, or for any other purpose not provided for in this section, shall be tuilty of a felony.

(H) Nothing herein contained shall prevent the dissemination in a newspaper or other publication, or by radio, television, or other means of communication, of information obtained by means of such order after such information has been disclosed in any court proceeding.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

The purpose of this bill is to extend the means of gathering evidence. In a scientific era, law enforcement is still chained to obsolete methods of detecting crime.

The effect of this bill would be to allow judicially directed search warrants for limited periods of time in restricted circumstances. Specifically, this bill would authorize the detection and interception of communications upon the direction of responsible judiciary in cases of enumerated crimes, for a limited time period, in a particular manner. Under this bill, such warrants would issue on the showing of reasonable cause to believe that evidence of the commission of the specified crime may thus be obtained.

CONSTITUTIONALITY

Legislative Counsel has rendered an opinion that such a law would be constitutional. (Wire-tapping, No. 10673, May 1, 1955.)

New York has been working under a similar law since 1938.

PRIOR LEGISLATIVE HISTORY

A bill concerning the same subject matter (AB 612) was presented in 1955; it was put in the inactive file.

DISCUSSION

In order to meet modern problems, law enforcement needs modern methods. The use of electronic devices, systems of communication and transportation should be as available to law enforcement as they are to organized crime.

Some of the worst criminal offenses, such as kidnapping and extortion, are planned in secrecy and executed at least in part by telephone. Syndicated crime requires communication between its members, much of it by telephone. Movement of supplies of narcotics and even local traffic in smaller quantities, depends on telephonic arrangements between supplier and dealer. Law enforcement should have the ability to detect such offenses in the planning stages so as to prevent irreparable damage to an innocent society.

As proposed, the bill would permit of this and at the same time incorporate safeguards to individual rights of privacy.

The proposal is patterned after the search warrant procedure, and requires judicial sanction prior to any action by a law enforcement officer. In addition, as proposed, the bill would require applications for interception to be made through the Attorney General or District Attorney. This would provide a further safeguard and help to insure a discriminate use of the procedure.

The proposal follows the pattern of law presently in force in New York and Massachusetts and has the support of the California Peace Officers Association and District Attorneys Association.

PENALTIES FOR NARCOTIC OFFENSES

DRAFT OF PROPOSED LEGISLATION

An act amending Sections 11500, 11501, 11502, 11530, 11531, 11532 and 11715.6 of the Health and Safety Code, and adding Section 11715.8 to the Health and Safety Code, relating to narcotics.

The People of the State of California do enact as follows:

Section 1. Section 11500 of the Health and Safety Code is amended to read:

11500. Except as otherwise provided in this division, every person who possesses any narcotic other than marijuana except upon the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this State, shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison for not less than two years nor more than 10 years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than two years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than five years nor more than 20 years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life, and shall not be eligible for release upon completion

of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

Section 2. Section 11501 of the Health and Safety Code is amended to read:

11501. Except as otherwise provided in this division, every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell, furnish, administer, or give away, or attempts to import into this State or transport any narcotic other than marijuana except upon the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this State shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison from five years to life, and shall not be eligible for release upon completion of sentence, or on any other basis until he has served not less than three years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in this indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or any other basis until he has served not less than 10 years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life, and shall not be eligible for release upon completion of sentence, or on a parole, or on any other basis until he has served not less than 15 years in prison.

Section 3. Section 11502 of the Health and Safety Code amended to read:

11502. Every person who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that said minor shall violate any provision of this

division, or who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale or peddling any narcotic other than marijuana or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any narcotic other than marijuana to a minor shall be punished by imprisonment in the state prison ~~not less than five years~~ from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison ~~for not less than~~ from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or any other basis until he has served not less than 10 years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life and shall not be eligible for release upon completion of sentence, or on parole, or any other basis until he has served not less than 15 years in prison.

Section 4. Section 11530 of the Health and Safety Code is amended to read:

11530. Every person who plants, cultivates, harvests, dries, or processes any marijuana, or any part thereof, or who possesses any marijuana, except as otherwise provided by law, shall be punished by imprisonment ~~in the county jail for not more than one year, or~~ in the state prison for not less than one year nor more than 10 years and shall not be eligible for release upon completion of sentence, or on parole, or any other basis until he has served not less than one year in prison.

If such person has been previously once convicted of any offense described in this division or has been previously convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than two years nor more than 20 years and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than two years in prison.

If such person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the State Prison for five years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

Section 5. Section 11531 of the Health and Safety Code is amended to read:

11531. Every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell, furnish, administer, or give away, or attempts to import into this State or transport any marijuana shall be punished by imprisonment ~~in the county jail for not more than one year,~~ or in the state prison from five years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than three ~~years~~.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from ~~10~~ 5 years to life, and shall not be

eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or has been previously two or more times convicted of any offense under the laws of any other state of of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in a state prison from ten years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than ten years in prison.

Section 6. Section 11532 of the Health and Safety Code is amended to read:

11532. Every person who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale or peddling any marijuana, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any marijuana to a minor, is guilty of a felony punishable by imprisonment in the state prison ~~for not less than five~~ from ten years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously once convicted of any offense described in this division or has been previously once convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison ~~for not less than~~ from 10 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than ten years in prison.

If such a person has been previously two or more times convicted of any offense described in this division or

has been previously two or more times convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison.

Section 7. Section 11715.6 of the Health and Safety Code is amended to read:

11715.6. In no case shall any person convicted of violating Sections 11500, 11501, 11502, 11503, 11530, 11531, 11532, 11540, 11557, or 11715, or of committing any offense referred to in those sections, be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court, if such person has been previously convicted of any offense described in this division except Section 11721, or has been previously convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division except Section 11721.

In no case shall any person convicted for the first time of violating Section 11502 or Section 11532, or of committing any offense referred to in those sections, be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

Section 8. Section 11715.8 is added to the Health and Safety Code to read:

11715.8. In addition to the term of imprisonment provided by law for persons convicted of violating Sections 11500, 11501, 11502, 11530, 11531, and 11532 of this Code, the trial court may impose a fine not exceeding $20,000.00 for each such offense. In no event shall said fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of said offenses.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

The purpose of this legislation is to strengthen the penalties to be imposed on persons convicted of violating the State Narcotic Law.

Without necessarily increasing the maximum sentences, the proposals do establish certain, well-defined minimum penalties for habitual offenders and for those who furnish narcotics to minors.

This measure considers the many varying situations involved in the proper disposition of narcotic offenders, and the prescribed sentences are based on such factors as the number of prior convictions, the nature and degree of involvement of the defendant, and the type of narcotic used. A graphical analysis of the proposed legislation, contrasted with the present law, is presented in the attached chart (EXHIBIT "A").

CONSTITUTIONALITY

This proposal modifies the prescribed penalties for acts which are presently defined as criminal offenses in the Health and Safety Code. It does not establish any new offenses or create any new classifications of crime. Therefore, there appear to be no constitutional questions concerning this proposal.

PRIOR LEGISLATIVE HISTORY

A bill concerning the same subject matter (A.B. 119) was proposed in 1959. The penalties provided in that measure were considerably more severe than this proposal. A.B. 119 was amended and passed by the Assembly and was not passed out of committee in the Senate. It should be noted that the approach of the measure now presented is different from A.B. 119 in that it considers separately the different types of offenses and proposes reasonable minimum penalties with emphasis on repeated or more serious offenders.

DISCUSSION

Latest figures compiled by the California Bureau of Criminal Statistics, the Department of Corrections, and the Federal Bureau of Narcotics reveal that narcotic offenses are steadily increasing in California and that this state is second only to New York in having the largest population of narcotic addicts in the country. To counter this dangerous trend, more effective means are required for investigating narcotic crimes and for the handling of convicted narcotic offenders. The measure proposed herein deals with the latter of these two objectives.

Experience in other states has shown that strict penalties are a potent and effective weapon to control narcotic offenses, and that where such measures have been instituted the illegal traffic in such drugs sharply declines. In Ohio, after the adoption of stern penalties which provided a minimum sentence of twenty years for persons convicted of selling narcotics, the number of addicts decreased over 65% within one year. Similar results have been obtained in Missouri, Michigan, Virginia and

New Jersey. Raising the mandatory prison sentences, and thus increasing the potential risk to the drug peddler, has helped to "dry up" the sources of narcotics and has thereby reduced the illegal use of drugs.

Under present California law, the sentences imposed on narcotic offenders may be so minimal that they represent no true penalty at all. Correctional authorities and psychologists contend that "certainty of punishment" is the basis for the use of our penal statutes as a deterrent to crime. Where, however, the sentence lacks any real punitive quality, it is merely considered an inconvenience or a "cost of doing business" and all effectiveness as a deterrent is lost. For example, a person convicted of furnishing heroin to a minor, although sentenced for "not less than" five years, is eligible for parole in twenty months. Less than two years seems a small price to pay for introducing a juvenile to a lifetime habit of narcotic addiction. A complete breakdown of the present penalty laws is contained in the attached chart (EXHIBIT "A").

The proposed measure does not prescribe harsh or unreasonable sentences, nor does it conflict with the provisions of the Indeterminate Sentence Law. Rather, it takes into consideration eighteen different situations and contains appropriate penalties based upon the type of offense, nature of the drug, and background of the offender. In the proposed law the importance of the Adult Authority in fixing sentences is recognized, and this agency is provided certain statutory standards in the form of minimum terms of imprisonment. Such standards are already contained in other statutes dealing with degrees of offenses, use of deadly weapons, habitual offenders, etc. This proposal then does not conflict with the concept of the Indeterminate Sentence Law, but merely offers needed amendments which present a more realistic approach to narcotic offenders.

Strengthening penalties would have several important effects: It will enforce longer periods of abstinence from the use of drugs and will separate the offender from his previous criminal environment. It will deter peddlers, pushers, and other traffickers in the sale of narcotic drugs and thus decrease the sources of supply. It will protect the public for longer periods of time from the known criminal tendencies of narcotic addicts. It will reduce the tremendous property loss from narcotic-connected crime, decrease the human and economic waste, and lower the cost of investigation, prosecution and treatment of narcotic addiction, resulting in great savings to governmental agencies and to the public.

This measure is supported by the District Attorneys Association, the Peace Officers Association, and the California Narcotic Officers Association.

EXHIBIT "A": Chart of Present and Proposed Penalties for Narcotic Law Offenses

VIOLATION	FIRST OFFENSE		SECOND OFFENSE		THIRD OFFENSE
NARCOTICS OTHER THAN MARIJUANA	Present	Proposed	Present	Proposed	Proposed*
Possession (11500 H&SC)	CJ**to 1 yr or SP to 10 yrs (elig for parole in 6 mos)	SP 2-10 yrs (elig for parole in 2 yrs)	SP 2-20 yrs (elig for parole in 8 mos)	SP 5-20 yrs (elig for parole in 5 yrs)	SP 15-life (elig for parole in 15 yrs)
Furnishing, Sale, Transportation, etc. (11501 H&SC)	CJ to 1 yr or SP 5-life (elig for parole in 20 mos)	SP 5-life (elig for parole in 3 yrs)	SP 10-life (elig for parole in 3 yrs, 4 mos)	SP 10-life (elig for parole in 10 yrs)	SP 15-life (elig for parole in 15 yrs)
Furnishing to Minors (11502 H&SC)	SP not less than 5 yrs (elig for parole in 20 mos)	SP 10-life (elig for parole in 5 yrs)	SP not less than 10 yrs (elig for parole in 3 yrs, 4 mos)	SP 10-life (elig for parole in 10 yrs)	SP 15-life (elig for parole in 15 yrs)
MARIJUANA					
Possession (11530 H&SC)	CJ to 1 yr or SP to 10 yrs (elig for parole in 6 mos)	SP 1-10 yrs (elig for parole in 1 yr)	SP 2-20 yrs (elig for parole in 8 mos)	SP 2-20 yrs (elig for parole in 2 yrs)	SP 5-life (elig for parole in 5 yrs)
Furnishing, Sale, Transportation, etc. (11531 H&SC)	CJ to 1 yr or SP 5-life (elig for parole in 20 mos)	SP 5-life (elig for parole in 3 yrs)	SP 10-life (elig for parole in 3 yrs, 4 mos)	SP 5-life (elig for parole in 5 yrs)	SP 10-life (elig for parole in 10 yrs)
Furnishing to minors (11532 H&SC)	SP not less than 5 yrs (elig for parole in 20 mos)	SP 10-life (elig for parole in 5 yrs)	SP not less than 10 yrs (elig for parole in 3 yrs, 4 mos)	SP 10-life (elig for parole in 10 yrs)	SP 15-life (elig for parole in 15 yrs)

1. Court may impose additional fine up to $20,000 in any case.
2. No probation following second or subsequent conviction or in any case of furnishing to minors.

*No separate provision in present law for third offense.
**Abbreviations: CJ-County Jail; SP-State Prison.

DRIVING PRIVILEGE OF NARCOTIC OFFENDERS

DRAFT OF PROPOSED LEGISLATION

An act to amend sections 1803 and 13350 of the Vehicle Code relating to the revocation of driving privileges.

The People of the State of California do enact as follows:

SECTION 1. Section 1803 of the Vehicle Code is amended to read:

1803. Within 10 days after the conviction of a person for any violation of this code, excepting violations of Sections 22500, 22502, 22503, 22508, and 22514, relating to the improper parking of vehicles, and of any narcotic offense under Division 10 of the Health and Safety Code, commencing at Section 11000, ~~when the use of a motor vehicle was involved in, or incident to, the commission of the offense~~, every judge of a court not of record and every clerk of a court of record in which the conviction was had, shall prepare and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted which abstract must be certified by the person so required to prepare the same to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

SECTION 2. Section 13350 of the Vehicle Code is amended to read:

13350. The department shall immediately revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(a) Manslaughter resulting from the operation of a motor vehicle.

(b) Driving when addicted to the use, or under the influence of a narcotic drug or amphetamine or any derivative thereof under Section 23105.

(c) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(d) Upon three or more convictions upon violation of Section 20002, 23103, or 23104 within a period of 12 months from the time of the first conviction, or upon a combination of three or more of any such convictions within a like period.

(e) Any felony in the commission of which a motor vehicle is used, except as provided for in Section 13550, 13552, or 13553.

(f) Any narcotic offense under Division 10 of the Health and Safety Code commencing at Section 11000.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

Purpose of this proposal is to provide for the revocation of driving privileges of any person convicted of a narcotic law violation.

Section 1803 of the Vehicle Code presently provides that abstracts of judgement of conviction of narcotic offenses be sent to the Department of Motor Vehicles only in cases where an automobile is involved in the commission of the offense.

Under present Section 13350 of the Vehicle Code, the only specified narcotic conviction which will result in revocation by the Department of Motor Vehicles is violation of Section 23105 Vehicle Code (driving when addicted or under the influence of a narcotic.)

The proposed amendments would broaden grounds for revocation to include any offense under Division 10 of the Health and Safety Code. Thus, the offenses of sale, possession, transporting, using and furnishing narcotics would all be included as grounds for license revocation.

CONSTITUTIONALITY

While it has been held that use of the highways of the State is a right, it is subject to reasonable regulation for the public good. The State by regulation may insure competence and care on the part of its licensees and protect others using the highways. Escobedo vs. State of California, 35 Cal.2nd 870, 876. Thus, it has been held that financial responsibility requirements are valid. The traffic in illegal narcotics creates a compelling public need for controls over the movements of narcotics and for protection of those using the highways from the driver who illegally uses, or aids and abets others in the illegal use of, narcotic drugs.

PRIOR LEGISLATIVE HISTORY

So far as is known no previous bill has been offered to accomplish revocation of the driving privileges of all narcotic offenders.

DISCUSSION

It is well known that the traffic in illegal narcotics is greatly facilitated by the use of the automobile. A reading of the California Reports and Appellate Reports at random demonstrates the fact that automobiles are regularly used by the peddler in his business. The supplies of narcotics coming in from Mexico are brought in primarily by automobile. As in most every "business," the automobile has come to be depended upon by the illicit trafficker in narcotics. Much could be accomplished toward slowing this traffic by revocation of the driving privilege of the convicted narcotic offender. This proposal would help to discourage this traffic and at the same time would afford greater protection to the innocent citizen using the highways.

SEARCH INCIDENT TO ARREST

DRAFT OF PROPOSED LEGISLATION

An act to add Article 2 (commencing with Section 11035) to Chapter 1 of Division 10 of the Health and Safety Code relating to searches incident to arrests for narcotic offenses.

The people of the State of California do enact as follows:

SECTION 1. Article 2 (commencing with Section 11035) is added to Chapter 1 of Division 10 of the Health and Safety Code, to read:

Article 2. Searches and Seizures

11035. Whenever a lawful arrest is made for a violation of any provision of this division, a prompt and reasonable search for evidence relevant to the offense, of any vehicle under the dominion and control of the arrested person, or any house, apartment or room lived in, rented by, or occupied by the arrested person shall be deemed incident to the arrest.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

It is the purpose of this proposal to authorize searches of automobile and premises of persons lawfully arrested for having committed a narcotic law violation.

Existing decisions interpreting the meaning of the phrase "incident to arrest" are varying and in many cases unrealistic. For example in one case, search of the apartment of an arrested narcotic offender was held unreasonable because it was 95 feet away from the locality of the arrest. Hernandez v. Superior Court, 143 C.A.2d 20 (1956).

The effect of the proposal would be to define the term "incident to arrest" to include search of automobile or premises of one lawfully arrested for a narcotic law violation. This would thus eliminate the limitation on such searches to the immediate vicinity of the arrest, and permit reasonable searches for the supply of narcotics which may be kept by the supplier, peddler or user.

CONSTITUTIONALITY

In the Cahan decision itself, the court acknowledges that the exclusionary rule is "not an essential ingredient of the right or privacy guaranteed by the Fourth Amendment, but simply a means

of enforcing that right, which the states can accept or reject." People vs. Cahan, 44 C.2d 434, 440 (1955).

Thus, it is recognized that the exclusionary rule in California is a judicially declared rule which the Legislature might negate.

If the rule itself can be negated, then reasonable limitations on the rule can likewise be enacted.

Historically, the Legislature has prescribed the rules of evidence for the trial of actions and the prosecution of criminal offenses. In this connection we find numerous statutory directions as to the admissibility of various kinds of evidence and the foundations required to be laid before evidence will be admissible.

Since a statute repealing the effect of Cahan would not be unconstitutional, a statute modifying the exclusionary would perforce be valid. The proposal here does not even purport to modify the exclusionary rule but simply seeks to clarify and give reasonable construction to the term "incident to arrest" as it applies to admissibility of evidence.

PRIOR LEGISLATIVE HISTORY

This proposal was offered in 1959 in Senate Bill 523. As was the case with several other proposals in the field of narcotic search and seizure, it seemed to get lost in the controversy over Senate Bill 728 dealing with the exclusionary rule.

DISCUSSION

At present officers arresting a narcotic violator are powerless to seek out his supply which may be in his automobile, premises or other location away from the site of the arrest. An artificial limitation has been placed on the terms "incident to arrest" so that search of any place away from the scene of arrest cannot be deemed an incident or integral part of the arrest. This seems an unreasonable restriction, since narcotic sellers rarely carry their supply with them on the street. They will carry only a bindle or two at a time, which can readily be disposed of by swallowing on the approach of an officer. Arrest of the narcotic violator himself is only a part of enforcement. The supply of illegal drugs also needs to be confiscated to prevent its return to the illegal traffic.

Since the narcotic itself is such an integral part of a narcotic violation, there is need to permit recovery of supplies of the drug on apprehension of the violator.

It should be kept in mind that this proposal does not authorize indiscriminate searches. Any search, to be justified under this proposal, would have to be preceded by a lawful arrest,

based on reasonable cause, of a narcotic law violator.

Such a violator should not be permitted to have his premises be a sanctuary for the concealment of the goods of his illegal trade.

Together with the existing restrictions on night time search warrants, present restrictions on searches incident to arrest mean a violator need only operate at night and leave his supply at home, and he is untouchable by the police.

In view of the seriousness of our narcotic problem in California, we must provide effective yet reasonable methods by which narcotic enforcement officers can accomplish what the people demand. This proposal seeks only to make lawful that which is reasonable and expected, i.e. the seeking out of the supply of the lawfully arrested narcotic violator.

NIGHT SEARCH WARRANTS

DRAFT OF PROPOSED LEGISLATION

An act to amend Section 1533 of the Penal Code relating to the time of service of search warrants.

The People of the State of California do enact as follows:

SECTION 1. Section 1533 of the Penal Code is amended to read:

1533. ~~The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.~~ A search warrant issued under this chapter may be served at any time of the day or night.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

Present Section 1533 of the Penal Code restricts the service of search warrants to daytime only unless the affidavit upon which the warrant is based be positive that the property is on the person or in the place to be searched. This type of affidavit is rarely if ever possible to make. This proposal would permit service of search warrants in the day or night time without differentiation.

The present restriction on night service means that the magistrate is powerless to issue a search warrant to be served at night unless positive affidavits are presented; thus, reasonable cause is not a sufficient grounds for issuance of night warrants even though such reasonable cause is based on strong and reliable information. Under present law search warrants can be issued where the magistrate is satisfied that there is probable cause to believe that the grounds for the application do exist. This requirement of probable cause for the issuance of the search warrant is not changed. The proposal provides simply that the execution of such warrant may be undertaken in either the day or night time.

CONSTITUTIONALITY

The proposed legislation is in complete harmony with the constitutional restrictions on search and seizure.

The general restriction on search warrants found in Article I, Section 19 of the California Constitution prohibits searches under circumstances which are "unreasonable." This restriction, which is the only limitation on legislation in the field of search warrants, clearly does not prohibit the enactment of reasonable rules adopted in the exercise of a state's police power. Elliott v. Hoskins, 20 Cal.App.2d 591 (1937).

From the standpoint of the "reasonableness" of a search, there is no logical distinction between a warrant executed during the day and one executed at night. In either case a magistrate has first approved the intended search, and it is this requirement of approval by a magistrate which provides the basic safeguard against unreasonable searches.

On this point, the Supreme Court of Michigan held that statutes expressly providing that under certain conditions search warrants may be executed in the night time do not violate the constitutional prohibition against unreasonable searches nor do those which do not specify or limit the time of execution. Voorhies v. Faust, 220 Mich. 155, 189 N.W. 1006 (1922).

PRIOR LEGISLATIVE HISTORY

Senate Bill 526 offered in the 1959 session provided for outright repeal of Section 1533 of the Penal Code, the effect of which would have been to eliminate any distinction between day and night search warrants. Senate Bill 526 died in committee although there appeared to be no serious objections to its purpose. The present proposal affirmatively authorizes day or night execution of search warrants issued in accordance with Penal Code provisions.

DISCUSSION

Present Penal Code Section 1533 forces the issuing magistrate to insert a direction in the warrant that it be served only in the day time unless the affidavits are positive that the property is on the person or in the place to be searched.

The effect of this requirement of "positiveness" is to make the execution of a search warrant at night virtually impossible. This impractical restriction is particularly unworkable in the field of narcotic violations where the use of a search warrant could play a vital part in the enforcement of narcotic laws.

In our modern society there is little merit in differentiating between the service of a warrant before and after the cessation of the sun's natural light. Probably the majority of narcotic dealings occur at night. Supplies of narcotics kept for sale by offenders may be soon sold or used, necessitating prompt action on the part of law enforcement officers to seek the contraband before it is gone. Most narcotic offenders are detected and apprehended by means of information coming to the officer from various sources. Such facts and information supply the probable cause upon which the magistrate determines the propriety of issuing a search warrant. To require more than this, i.e., to require positiveness or certainty, is to extend the doctrine of reasonable cause to the point of impossibility.

Since present Section 1533 requires such positive allegation for the issuance of a warrant to search at night, night search warrants are for all practical purposes unavailable as an aid to law enforcement. The many decisions on search and seizure impliedly

encourage the police to utilize search warrants whenever possible so as to place the authority of a magistrate between the officer and the defendant. However, by virtue of the present unrealistic restriction on the execution of warrants after dark, the use of such process is greatly discouraged. So long as the rules governing search warrants render them incapable of meeting modern police needs, we cannot expect full utilization of this important safeguard.

The federal government and most states have enacted legislation to eliminate the stringent rule of "positiveness." In 1956 Congress enacted Section 1405 of the Narcotic Control Act (Part I Title 18 Ch. 68 Section 1405 U. S. Codes), which section now provides for execution of search warrants either day or night without distinction. Numerous states darw no distinction between the execution of warrants in the daytime and at night. These states include Indiana, Washington, Wisconsin, Michigan, Minnesota, Texas, Tennessee, South Carolina, North Carolina, Hawaii, Mississippi, and Oregon. Other states have statutes leaving the time of execution to the discretion of the issuing magistrate. These states include Illinois, Louisiana, Delaware, Ohio, Vermont, New Jersey and Massachusetts. Only a few states still require positive affidavits before the magistrate may direct a night time search. These are Alabama, Arizona, Idaho, Kansas, Utah, Oklahoma and New York. It is to be noted however, that of these latter states New York, Arizona, Utah and Kansas do not have the exclusionary rule, and, thus, the search warrant procedure does not have the significance that it has in states limiting admissibility of evidence to that which has been seized lawfully.

It should be further noted that the many decisions since People vs. Cahan have made it clear that an arrest may be made without a warrant whenever an officer has reasonable cause to believe that the person to be arrested has committed a felony. Thus, an arrest may be made at night based on this reasonable cause. Under present restrictions a search may not be made at night unless the officer is positive that the property he seeks is on the person or in the place to be searched. It seems anomalous that present law will not permit a search based upon reasonable cause but will permit the more drastic action of arrest.

The enactment of this proposed amendment would serve as a step in bringing California law of search and seizure in line with the needs of modern law enforcement. This proposal is endorsed by the California Peace Officers Association, California District Attorneys Association and the Narcotic Officers Association of California.

DISCLOSURE OF INFORMANTS

DRAFT OF PROPOSED LEGISLATION

An act to amend Section 1881 of the Code of Civil Procedure, relating to examination of witnesses with respect to confidential communications.

The people of the State of California do enact as follows:

SECTION 1. Section 1881 of the Code of Civil Procedure is amended, to read:

(Refer to Section 1881, subdivision 1 through 5 and incorporate the same as it now exists).

6. In any preliminary hearing, criminal trial or other criminal proceeding for violation of any provision of Division 10 of the Health and Safety Code, evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense charged, shall be admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed.

~~6~~7. A publisher, editor, reporter or other person connected with or employed upon a newspaper cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper.

ANALYSIS OF PROPOSAL

PURPOSE AND EFFECT

The purpose of the proposal is to place a reasonable limitation on the requirements of disclosing informants in narcotic cases.

Since informants supply the great majority of information concerning narcotic offenses, there is a need to encourage this flow of information and at the same time provide safeguards for the accused so that he will not be denied a fair determination of his case.

This bill seeks to accomplish this by allowing evidence of information received from undisclosed informants to be admitted solely on the question of reasonableness of the arrest or search.

Disclosure would be required, on the other hand, in any case where the informant is a material witness on the issue of guilt or innocence of the accused.

Thus, in the "plant" situation, where it is alleged or contended that the informant is in some way involved in framing or planting the accused, an issue of guilt or innocence is raised which would require disclosure.

Similarly, in any case where identity of the informant is essential to a fair determination of the guilt or innocence of the accused, disclosure would be required.

CONSTITUTIONALITY

When former Senate Bill 524 was offered in the 1959 session, a Legislative Counsel's opinion was rendered casting doubt on the constitutionality of such a measure.

There is some question as to the correctness of the opinion and consequently a supplementary "brief" is attached hereto dealing with this question.

PRIOR LEGISLATIVE HISTORY

This proposed amendment is based upon a similar bill (Senate Bill 524) introduced in the 1959 session. Senate Bill 524 was amended several times and finally passed by the Senate. It died in the Assembly Criminal Procedure Committee.

Another proposal, broader in scope, was offered in 1959 in Assembly Bill 1197 and also failed of passage.

The present proposal incorporates the substance of Senate Bill 524 as amended April 21, 1959, but eliminates that portion of the amendment which made the section inapplicable to civil trials. This latter provision is deemed unnecessary since the proposal itself applies only to "preliminary hearings, criminal trials or other criminal proceedings for violation of any provision of Division 10 of the Health and Safety Code . . . ."

DISCUSSION

It is well-recognized that the great bulk of information upon which narcotic enforcement officers act, comes from informants. Narcotic offenses, unlike most other crimes, do not have a "victim." These offenses are not reported to the police and, consequently, they must be sought out. In this process information from sources in the field is indispensable.

To require disclosure in every instance wherein an officer has utilized information from an informant would result in a drying up of these sources. If an officer must "burn up" his informants one by one, he will soon be out of business.

Disclosure of informants in many instances is truly contrary to the public interest. Since narcotic offenses constitute one of the most serious problems in California today, the public interest requires a flow of information enabling officers to act effectively.

When disclosed, a valuable informant loses his effectiveness, is no longer in position to gain information and is even subject to violence in retribution. More than one informant has been beaten, even killed, when it was learned he was supplying information concerning narcotic offenders to the police.

The law presumes that a witness speaks the truth. Thus, it would appear that the implication in some case law that officers would be inclined to make up "phantom informers" is no more valid than to say that they would perjure themselves in other phases of their testimony.

Present rulings on disclosure seem anomalous. For example, the courts have authorized arrests and searches based on anonymous tips when corroborated by the officers' own observations. Willson vs. Superior Court, 46 C.2d 291 (1956). Should not a valuable, reliable, tested informant be accorded the same anonymity in similar circumstances?

While these and numerous other arguments seem to clearly show a need for change in the informant rules, it is recognized that at the same time some reasonable safeguards are required to protect the accused.

One of the principal questions posed in previous hearings on the informant problem was the manner by which an accused could protect himself in the case of a "frame-up" or "plant."

Assume the case of an informant who for reasons of spite plants narcotics in the accused's house and then calls police to report that the accused is in possession of narcotics. Clearly, if no other evidence connecting the accused were found, the facts on their face would point to the informant as a material witness, indeed even a suspect, on the issue of guilt or innocence; consequently, in such a case disclosure would, of course, be required.

On the other hand, assume the case wherein a reliable informant communicates with the police and based on his information, they are given good reason to believe the accused has narcotics in his possession. At the time of arrest the accused is found in the process of taking a "fix," or he tries to conceal or dispose of narcotics. In this instance guilt or innocence would not rest with the informant, but with the defendant's own conduct. In such a case the identity of the informant would be immaterial to the guilt or innocence of the accused, and his identity could properly be protected without denying the accused his right to a fair determination of the case.

It should be noted and emphasized that the bill as proposed does not automatically make an informant's information reasonable cause to arrest or search. It simply provides that the court can consider this information on the issue of reasonable cause without requiring

disclosure of identity. The Court can then weigh and appraise the officer's testimony and either accept or reject his grounds for reasonable cause, without requiring disclosure of names.

The use of informants has long been approved by the Courts. In narcotic enforcement the need is great. This proposal provides reasonable protection to valuable sources of information, and at the same time affords adequate protection to the accused.

CONSTITUTIONALITY

In Priestly vs. Superior Court, 50 C.2nd 812, where the informant was relied on only to show probable cause, and was not involved in the crime, the court said ... "the policy conflict is between the encouragement of the free flow of information to law enforcement officers and the policy to discourage lawless enforcement of the law."

The proposed enactment then would be to say in effect that the legislature finds that the policy of free flow of information to peace officers does out outweigh the policy of mandatory disclosure as a means of discouraging lawless enforcement of the law. More specifically, the legislature would be saying that the risk that a peace officer might lie to the court concerning the information received is outweighed, in the situation where the informant is not a material witness to guilt or innocence, by the policy of encouraging free flow of information in narcotic cases.

Certainly the Priestly case cannot be viewed as holding that a legislative determination that the factors should be so balanced would be so arbitrary as to constitute a denial of due process. The officer would still be subject to cross-examination and the court would be free to disbelieve or give greater or lesser weight to his testimony.

The scope of cross-examination is more limited in present well established privileges such as husband-wife, attorney-client, etc. For example, in People vs. Abair, 102 C.A.2nd 765, a witness testified against the defendant. Defendant sought to impeach the witness by testimony of an attorney that the witness told the attorney that defendant had nothing to do with the crime charged. The witness was permitted to claim the privilege and testimony of the attorney was excluded.

The federal courts have not found any constitutional right of due process in the question of disclosure of an informant, where the sole issue is reasonable cause to make an arrest or search. In the leading case of Roviaro vs. United States, 353 U.S. 53, the informant was a witness to and participated in, the offense charged. Even here, the Court did not find any absolute right to disclosure. They held instead that the problem called for balancing the public interest in protecting the flow of information against the individual rights to prepare his defense. This balance depends on the circumstances of each case, the nature of the crime charged and other relevant factors.

In Jones vs. United States, 271 F 2nd 494 (1959) officers received information from an informant which led them to arrest defendant as he alighted from a train and a search revealed narcotics on his person. The Court upheld the government's claim of privilege when defendant sought the name of the informant.

In still another case Jones vs. United States, 362 U.S. 257, the U. S. Supreme Court upheld a search warrant based on information from an undisclosed informant and upheld a procedure which denied to the defendant disclosure of the name of the informant in his challenge of the reasonable cause to issue the warrant. It is clear that the Court could not have reached the conclusion it did if it felt that the defendant had a constitutional right to disclosure of the informant's identity.

Because both the United States Supreme Court and the California Supreme Court have regarded the issue as one of balancing competing considerations of public policy, it seems unlikely that they would regard a legislative resolution, based on factual study of the underlying problems, as being so arbitrary as to be declared unconstitutional.

It is to be noted that this is the view expressed by Prof. Edward Barrett, Professor of Constitutional Law, University of California, in testimony before the Senate Judiciary Committee in 1959 concerning Senate Bill 524.

Proposed Amendment to Penal Code Section 1540

Penal Code -- Section 1540

Property, when to be restored to person from whom it was taken. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken., after the termination of any pending criminal proceedings, and such property shall be admissible in any pending criminal proceedings, and shall not be excluded on the grounds that it was obtained by means of an unreasonable search and seizure.

(New matter underlined)

Proposed Change with Reference to Informers

Code of Civil Procedure Section 1881.5

A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure, nor can he be required to disclose the source of any information tending to establish probable cause for an arrest, search and seizure, or for the issuance of a search warrant, and such evidence or testimony based on such information from an undisclosed informant shall not be struck where the privilege against disclosure is exercised and shall be admissible to establish probable cause for an arrest, search and seizure, or for the issuance of a search warrant.

(New matter underlined)

An act to add Section 11689 to the Health and Safety Code, relating to evidence in criminal actions and proceedings involving narcotic laws.

The people of the State of California do enact as follows:

Section 1. Section 11689 is added to the Health and Safety Code, to read:

11689: In any criminal action or other proceedings commenced to enforce provisions of this division, all relevant, competent and material evidence not otherwise privileged, shall be admissible and no competent, relevant and material evidence shall be excluded because it was obtained by means of an unreasonable search and seizure or without a search warrant. Nothing in this section shall be construed to limit the right of any person to seek and obtain redress for any injury to his person or property or for the infringement of any of his rights.

ALA:je
6-17-60

Proposed Legislation with Reference to Liability of Law Enforcement Officers for an Unreasonable Search and Seizure

Civil Code Section 52a (New Section)

Any person within the jurisdiction of this State is entitled to be free from unreasonable searches and seizures committed by any law enforcement officer.

Civil Code Section 52b (New Section)

Whenever any law enforcement officer makes an unreasonable search and seizure contrary to the provisions of Section 52a of this Code, such law enforcement officer shall be liable for each and every such offense for the actual damages and five hundred dollars ($500) in addition thereto suffered by any person denied the rights provided in Section 52a of this Code.

Civil Code (See 1959 Supplement Section 51).

This section shall be known, and may be cited as the Unruh Civil Rights Act.

All citizens within the jurisdiction of this State are free and equal, and no matter what their race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a citizen which is conditioned or limited by law or which is applicable alike to citizens of every color, race, religion, ancestry, or national origin.

/ Am. Stats. 1959, ch. 1866, Section 1. /

Section 52.

[Denial, discrimination, etc. contrary to Section 51: Liability in damages.]

Whoever denies, or who aids, or incites such denial, or whoever makes any discrimination, distinction or restriction on account of color, race, religion, ancestry, or national origin, contrary to the provisions of Section 51 of this Code, is liable for each and every such offense for the actual damages, and two hundred and fifty dollars ($250) in addition thereto, suffered by any person denied the rights provided in Section 51 of this Code.

[Am. Stats. 1959, ch. 1866, Section 2.]

Proposed Legislation with Reference to

Sale of Heroin and Marijuana

The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice deems a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of a violation of Section 11501, Health and Safety Code, Section 11502, Health and Safety Code, Section 11531, Health and Safety Code and Section 11532, Health and Safety Code, nor shall the execution of the sentence imposed upon such person be suspended by the court.

The existence of such unusual facts or circumstances which call for a deviation from the declared policy of the people of the State of California against probation and the reasons therefor shall be spread upon the minutes of the court in detail must be set forth in an order entered upon the minutes.

(Note: The above amendment may be added to each of the sections set forth and/or to Section 11715.6, Health and Safety Code.)

See 1050 P.C. 1385 P.C.

§ 3049. (Minimum imprisonment in other cases: Limitations on rule: Parole after service of minimum term.) In all other cases not heretofore provided for, no prisoner may be paroled until he has served the minimum term of imprisonment provided by law for the offense of which he was convicted, except that in cases where the prisoner was serving a sentence on December 31, 1947, and in which the minimum term of imprisonment is more than one year, he may be paroled at any time after the expiration of one-half of the minimum term, with benefit of credits, but in no case shall he be paroled until he has served one calendar year; provided, that any prisoner, received on or after January 1, 1948, at any state prison or institution under the jurisdiction of the Director of Corrections, whose minimum term of imprisonment is more than one year, may be paroled at any time after the expiration of one-third of the minimum term, <u>except that no prisoner convicted of a violation of Section 11501 of the Health and Safety Code, Section 11502 of the Health and Safety Code, Section 11531 of the Health and Safety Code and Section 11532 of the Health and Safety Code may be paroled until after he has served the minimum term prescribed by law.</u> In all other cases he may be paroled at any time after he has served the minimum term prescribed by law. (Added by Stats. 1941, ch. 106, § 15, Am. Stats. 1947, ch. 1381, § 6; Stats. 1949, ch. 555, § 1.)

See note to § 2926.

(New matter underlined)

Alternative Suggested Change with Reference to Parole of Narcotics Law Violators

The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice deems a departure from the declared policy, no prisoner, received on or after January 1, 1962, convicted of a violation of Section 11501, Health and Safety Code, Section 11502, Health and Safety Code, Section 11531, Health and Safety Code, and Section 11532, Health and Safety Code shall be paroled until after such prisoner shall have served the minimum term prescribed by law.

The existence of such unusual facts or circumstances which call for a deviation from the declared policy of the people of the State of California against parole for violation of the above offenses until the minimum term prescribed by law shall have been served, shall be determined by no less than _____ members of the Adult Authority.

Proposed Changes to the Vehicle Code

Re Consent to Search

Section 4150 Vehicle Code (Same as old veh.code § 143)

Consent to a search of the vehicle for narcotics by any law enforcement officer in the performance of his official duties. (Note: The above matter would be an additional requirement for application for the registration of a vehicle.)

*****

Section 4750 Vehicle Code (Same as old veh.code § 148)

If the applicant refuses to consent to the search of the vehicle for narcotics by any law enforcement officer in the performance of his official duties. (Note: The above matter would be additional grounds for refusing an application for registration of a vehicle.)

****

Section 12800 Vehicle Code (Same as old veh.code § 265)

Consent to submit any vehicle to be operated by the applicant to a search for narcotics by any law enforcement officer in the performance of his official duties. (Note: The above matter would be an additional requirement for receiving a license to drive a vehicle.)

****

Section 12805 Vehicle Code (Same as old veh.code § 269)

Refuses to consent to submit any vehicle to be operated by the applicant to a search for narcotics by any law enforcement officer in the performance of his official duties. (Note: The above matter would be an additional ground for refusing an application for a license to drive a vehicle.)

ADDITIONAL RECOMMENDATIONS

1. To recommend the enaction of legislation requiring an applicant for the registration of a vehicle or the renewal of the registration of a vehicle to consent in writing at the time of such registration to a search of his vehicle for narcotics as defined by the Health and Safety Code by any law enforcement officer as a condition of the privilege to operate such vehicle upon the state's highways.

2. To recommend the enactment of legislation requiring an applicant for a driver's license or for the renewal of a driver's license to consent in writing at the time of such application for such license to the search of any vehicle operated by him for narcotics as defined by the Health and Safety Code by any law enforcement officer as a condition of the privilege of operating a motor vehicle in the State of California.

3. To recommend the legislation permitting the search of all vehicles entering the State of California from outside of the United States for narcotics as defined in the Health and Safety Code by any member of (California Highway Patrol, The Bureau of Narcotics Enforcement, or The Department of Agriculture) because the illegal importation of such narcotics into this state constitutes an increasing menace to the health, safety, and morals of the citizens of the State of California because of the infectious nature of narcotics addiction and the serious harmful physical and moral effects attributable to the use of such narcotics and further because almost all of the narcotics found in California are transported illegally across our state's borders from outside of

the United States.

4. To recommend legislation automatically revoking the driver's or chauffeur's licenses of any person convicted of the crimes of narcotics addiction, narcotics possession, or sale of narcotics including the sale to a minor.

Narcotics

STATEMENT OF WILLIAM H. PARKER, CHIEF OF POLICE, LOS ANGELES POLICE DEPARTMENT, FILED WITH THE SENATE JUDICIARY COMMITTEE OF THE CALIFORNIA LEGISLATURE ON MONDAY, MARCH 27, 1961, IN SUPPORT OF SENATE BILLS 80, 81, and 82.

There is a semblance of futility in the presentations of the primary law enforcement agencies to the forums of the Legislature as, year after year, more powerful forces exert their influences to perpetuate the disadvantageous position of the police.

For example, we find open opposition from a judiciary that speaks from a position of advantage when lawyer-legislators are the audience. We find spokesmen for the Bar taken from among those who ply their profession in the defense of criminals and who oppose almost any measure that will impair their ability to win. The position of the Governor, as it is conveyed through his staff to the legislators, carries great weight in terms of patronage.

You realize, of course, through judicial legislation, the prosecutors and the judiciary are exempt from personal liability in the performance of their official acts. You also realize that this same protection is not extended to the lowly policeman. His every action is subject to judicial scrutiny in an ex post facto consideration that may result in personal penalty.

When crime increases, as it has steadily during the recent past, do you find those who have successfully blocked effective legislation sharing in the opprobrium? Of course not. Why should they? It is easier to charge the responsibility to police stupidity.

Well, gentlemen, I can tell you that the present level of police proficiency will probably decline, rather than increase. At present hundreds of police officers in this State are contributing thousands of hours of their

own time, without compensation, to attempt effective performance in face of needless obstacles. It is doubtful that this spirit of self-sacrifice can be maintained indefinitely in view of what appears to be a lack of support born of disinterest.

Society can ill afford the financial cost of compensating for the artificial barriers obstructing criminal justice. The people are being short-changed as they are not getting full value for their criminal justice dollar.

It is this Legislature that must restore balance to the scales of justice and exhibit more concern for the innocent victims of crime. Those who espouse other approaches have experienced failure that they do not bother to explain. They have sown the wind and they are reaping the whirlwind. Those who are unwilling to face up to the criminal assaults upon our people must expect to shoulder their full share of the ultimate responsibility.

In a press release dated February 27, 1961, Governor Brown announced his program of narcotics legislation. There is general accord with some of the proposals he supports, such as the bill now before this committee requiring convicted narcotic offenders to register. The position he has assumed that most sharply conflicts with the recommendations of the law enforcement agencies involves our proposed modification of the rules of evidence established by the Cahan and Priestly decisions. While I dislike placing myself in a position of disagreement with the Governor, I am compelled to rebut some of his statements. On page 4 of his February 27 press release he states, "...as a matter of experience, too, Federal officials have operated since 1914 under the exclusionary rule established in California by

the Cahan case in 1955. They have not found it an obstacle to effective law enforcement...."

Contrast this cliche with the following statement by Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, contained in a prepared speech delivered before the Annual Conference of the International Association of Chiefs of Police in Washington, D. C. on October 3, 1960:

> "Take, for example, the vast area of legal technicalities and delays--weapons which have been used time and again by the criminal underworld and its subversive counterparts through their legal mouthpieces to thwart the interests of justice. On repeated occasions, we have found that the legal definition of what constitutes proper police action is so lacking in clarity that even the courts are unable to agree.
>
> "What better example can be cited than the critical area of search and seizure? In the past 19 years, the Supreme Court has decided 30 different cases originating in police action and involving a question of search and seizure. In not a single one of these 30 cases could the Supreme Court reach unanimous agreement. And only two of the 30 cases were decided by a majority of eight Justices. With such a division of opinion on the Supreme Court itself, it is no wonder that so much confusion and uncertainty

exist within the law enforcement profession--or that so many self-appointed underworld mouthpieces look upon the Fourth Amendment as one of their most valued aids for circumventing justice.

"The emphasis upon loopholes and technicalities in the law has become so extreme that last year one of our Supreme Court Justices found cause to warn his colleagues, 'We should not place additional burdens on law enforcement agencies.' Referring to the Court's decision in this same case, a major newspaper in the Nation's Capitol was prompted to remark, 'When reasonable men and learned judges, examining the same set of facts, disagree as to where the line should be drawn between legal and illegal arrest, that line becomes so thin that one must wonder whether the intent of the Fourth Amendment has been more obscured than clarified.'

"The basic premise of a truly democratic society is that a fine balance be maintained at all times between the rights of the individual and the rights of society. Whenever one is accorded greater consideration than the other, justice becomes a mockery and our democratic traditions invariably suffer.

"The machinery of criminal justice in this country exists for one purpose--to protect society. When it closes its eyes to the protection of society and sees only the convenience of the individual, then justice becomes a hollow mockery."

It is also suggested that those who may really believe the exclusionary evidence rule has not hampered Federal officers read the case of John Patrick Henry, Petitioner, V. United States - US - 4 Led 2d 134, 80 S Ct. - in which the F. B. I. was rebuffed in a search and seizure situation.

Your attention is invited to the fact that bank robberies in Los Angeles (a crime in which the F. B. I. has jurisdiction), increased 120% during the year 1960 as compared with 1955.

Another statement of the Governor's appearing on page 4 of his February 27 press release on narcotics, and which puzzles me, reads as follows, "... They (Federal officers) have also worked effectively without resort to the legalization of wiretapping...." Section 605 of the Federal Communications Act prohibits the intercepting and divulging of telephonic conversations. As both elements are required to constitute the offense, it has been possible for Federal Officers, where state laws do not prohibit, to engage in wiretapping as long as the contents of the message are not divulged. In fact Mr. J. Edgar Hoover testified before the House Judiciary Committee of the United States Congress in April 1955 that the F. B. I. had never tapped more than 200 telephone lines at any one time.

To place California peace officers on a parity with Federal officers in this regard would require a violation of Section 640 of the California Penal Code, and certainly the Governor is not suggesting such illegal conduct. I can only conclude that his statement is illusory and is subject to misinterpretation.

In presenting the case of law enforcement in support of Senate Bills 80, 81, and 82, let the record show that these bills have the unanimous support of the Associations of District Attorneys, Peace Officers, and Sheriffs of this State. The basis for their position has been eloquently stated by a member of the judiciary in California as follows:

(MORE TO FOLLOW)

MATERIAL EVIDENCE SHOULD BE ADMISSIBLE REGARDLESS OF HOW OBTAINED

California Constitution, Article I, Section 19 provides: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated---" This is a salutary rule. But it must be noted that it is only "unreasonable" searches and seizures that is prohibited. Considering the endless types of situations that are possible, there is bound to be a great difference of opinion among people including police officers as to whether it is reasonable or unreasonable to make a search or make an arrest under the myriad of fact situations presented.

Police officers are charged with the solemn obligation of safeguarding the lives and property of the people against the enemies of society; it is not the officers that are the enemies. Officers must frequently act rapidly and make fast decisions under pressure with sometimes only seconds or minutes with which to reflect. Officers aren't lawyers. And it is frequently difficult to determine whether to make a given search or a given arrest. In fact, it is frequently so difficult that it takes the Supreme Court at least a whole month to determine whether the decision the officer had to make in a few minutes was reasonable. And even then the Supreme Court judges are frequently divided 4 to 3, 5 to 2, etc. among themselves as to whether the officer's decision to search or arrest was reasonable or not.

The Constitution does not say that if the officer makes an unreasonable search that then the evidence that the officer has obtained or learned about as a result of the search cannot be presented in Court. If the framers of the Constitution intended to prohibit the presentation in Court of such evidence, it would have been very simple to have so provided in the Constitution. The framers knew how to use the English language and they clearly did not prohibit the introduction of such evidence in court.

At the time the Constitution was written, the question of whether evidence that was obtained as a result of an unreasonable search should be admitted in court was not a novel or unforseeable question that the framers of the Constitution did not know about. The question was one of the best known and oft debated questions in the field of law at the time the Constitution was written and had been for hundreds of years before that. The framers of the Constitution obviously knew about the question and did not intend to prohibit the introduction of such evidence for if they wanted to do that they would have provided so. What the framers wanted to prohibit, they prohibited and no more. They didn't write up a list of the millions of things they were not prohibiting such as that they were not prohibiting the introduction of such evidence in court. Neither has the legislature, the law making body of the state, prohibited the introduction of such evidence.

And for over one hundred years the California Supreme Court held that such evidence was admissible regardless of how obtained. And this is the holding of the overwhelming majority of Supreme Courts in the states of this country.

But in 1955, by a split 4-3 decision, four judges of the California Supreme Court erroneously assumed the job of the legislature and created a rule of law that any evidence obtained as a result of an unreasonable search cannot be presented in Court. And this was done despite the fact that the Constitution did not prohibit it and the legislature did not wish to enact legislation prohibiting it. The legislature should not abdicate it's function to these judges but should enact legislation providing that all material evidence may be presented in Court regardless of how it was obtained.

Prosecutions of law violators are by the people of the State of California for the benefit and protection of the people. The rule enacted by these four judges punishes-not the officer-but the people of this state by depriving them of protection from criminals. By prohibiting the introduction of material evidence in Court because the officer obtained the evidence by mistake in making a search that is considered unreasonable, criminals are frequently released to prey again on the public. If the officer blundered, why punish the innocent people of this state by depriving them of presenting evidence that is necessary for their protection. What sense does that make? It helps only the criminal. Punish the officer for his mistake and not society. Enact legislation providing that an officer who makes an unreasonable search is liable in civil damages to the person offended for a prescribed minimum amount of money. Legislation similar to this has been enacted in Civil Code 52 which prescribes minimum damages against persons who are in businesses open to the public and who discriminate against customers.

The rule enacted by these four judges has come to be known as the "exclusionary rule." Since the creation of this exclusionary rule the trial and appellate courts of this state have wasted much valuable time going into deep inquiry and taking much testimony on the entire factual picture upon which the officer made his decision to make the search in order to decide this collateral issue of whether his decision to search was reasonable. All the testimony presented and time expended on this collateral issue has nothing to do with the merits of the case and throws no light on whether the defendant is guilty or not. It only decides whether the officer has made an erroneous decision.

Distinguished from an unreasonable search, if an officer makes an unreasonable arrest of a person and files a complaint in court against him after such arrest, the California Supreme Court has not enacted any rule providing that the defendant must be released from custody because the arrest was unreasonable.

The offended person has civil right to sue the officer for damages for having made an arrest without reasonable cause.

The disastrous effects and utter ridiculousness of this exclusionary rule can be seen in the following examples. Bear in mind that if an officer makes what a court later decides is an unreasonable search of a building or a vehicle, the officer cannot testify to anything that he saw, heard, or obtained during that declared unreasonable search.

If the Court decided that the officer's search was unreasonable and the evidence was obtained in that search, this officer couldn't introduce into evidence or testify to having observed and seized a million dollars worth of heroin even though it be the truth.

If the Court decided that the officer observed the following in an unreasonable search, the officer couldn't testify to having seen a criminal attempt to give a two year old child an injection of heroin in a building or to having seen the criminal attempt to rape the two year old child, even though it all be true.

If the Court decided that the officer observed the following in an unreasonable search, the officer couldn't testify to having seen and seized a million dollar robbery loot and all the paraphernalia used to commit the crime, even though it all be true.

If the Court decided that an officer made an unreasonable search of the trunk of a vehicle or a room in a building and observed the corpse of a murder victim therein, according to the "exclusionary rule" the officer could not testify to where he found the body and that may be the only evidence to indicate who the killer was.

If the Court decided that an officer made an unreasonable search of a building and observed foreign agents conspiring and preparing weapons therein to overthrow the government by violence according to the "exclusionary rule" the officer couldn't testify to what he observed or the weapons he found there.

The criminals must really gloat over the exclusionary rule. It's interesting the frequency with which officers obtain incriminating evidence against defendants and then the courts later prevent the introduction of the evidence on the basis that there was no reasonable reason for making the search. It's amazing how lucky the officers are at discovering incriminating evidence when, according to the court, they had no reasonable basis for making a search. Perhaps the officers are gifted with extrasensory perception or, more probable that the officers frequently actually have a reasonable reason for making the search but the court's interpretation of what is an "unreasonable search" is too narrow and restrictive. Is the "exclusionary rule" for the best interests

of society or for the best interests of criminals?

PEOPLE v. CAHAN 44 CAL2d 434 (1955)

In the above entitled case, in a split 4-3 decision, four judges enacted the exclusionary rule as a "judicially declared rule of evidence." The following also appears in the decision at page 442: "The rule admitting the evidence has been strongly supported by both scholars and judges. Their arguments may be briefly summarized as follows:

"The rules of evidence are designed to enable courts to reach the truth and, in criminal cases, to secure a fair trial to those accused of crime. Evidence obtained by an illegal search and seizure is ordinarily just as true and reliable as evidence lawfully obtained. The court needs all reliable evidence material to the issue before it, the guilt or innocence of the accused, and how such evidence is obtained is immaterial to that issue. It should not be excluded unless strong considerations of public policy demand it. There are no such considerations.

"Exclusion of the evidence cannot be justified as affording protection or recompense to the defendant or punishment to the officers for the illegal search and seizure. It does not protect the defendant from the search and seizure, since that illegal act has already occurred. If he is innocent or if there is ample evidence to convict him without the illegally obtained evidence, exclusion of the evidence gives him no remedy at all. Thus the only defendants who benefit by the exclusionary rule are those criminals who could not be convicted without the illegally obtained evidence. Allowing such criminals to escape punishment is not appropriate recompense for the invasion of their constitutional rights; it does not punish the officers who violated the constitutional provisions; and it fails to protect society from known criminals who should not be left at large. For his crime the defendant should be punished. For his violation of the constitutional provisions the offending officer should be punished. As the exclusionary rule operates, however, the defendant's crime and the officer's flouting of constitutional guarantees both go unpunished. 'The criminal is to go free because the constable has blundered' (Cardozo, J., in People v. Defore, supra, 242 N.Y. 13, 21) and 'Society is deprived of its remedy against one lawbreaker, because he has been pursued by another.' (Jackson, J. in Irvine v. California, supra, 347 U.S. 128, at 136; see also 8 Wigmore on Evidence (3d ed.) 2184, p. 40.)

"Opponents of the exclusionary rule also point out that it is inconsistent with the rule allowing private litigants to use illegally obtained evidence (see Munson v. Munson, 27 Cal. 2d 659, 664 (166 P.2d 268); Oil Workers Intl. Union v. Superior Court, 103 Cal.App.2d 512, 579-580 (230 P.2d 71); cf., Herrscher v. State Bar, 4 Cal.2d 399, 412 (49 P.2d 832).

"The full opinion of the three judges which lacked only the vote of one judge to make it the majority opinion is as follows: "The guilt of the appellant is clearly demonstrated by the record before us. (see People v. Cahan, (Cal. App.) 274 P.2d 724.) He and his numerous codefendants unquestionably engaged in a far-reachin conspiracy to commit innumerable violations of the laws of the State of California. Six of his codefendants pleaded guilty and seven others, in addition to appellant, were convicted upon the trial. We have before us solely the appeal of defendant Charles H. Cahan.

"Upon the trial, certain evidence was admitted over the objection that it had been illegally obtained. The learned trial judge, following precisely the nonexclusionary rule which, until the filing of the majority opinion in this case, had been firmly established as the law of this state, admitted the evidence over the objection. The nonexclusionary rule had been enunciated by this court in the relatively early case of People v. Le Doux, 155 Cal. 535 (102 P. 517), and was reiterated in People v. Mayen, 188 Cal. 237 (205 P. 435, 24 A.L.R. 1383), after the United States Supreme Court had adopted the so-called Weeks doctrine. (Weeks v. United States, 232 U.S. 383 (34 S.Ct. 341, 58 L.Ed. 652, L.R.A. 1915B 834). More recently, this court, in a well-reasoned opinion written by Mr. Justice Traynor in People v. Gonzales, 20 Cal.2d 165 (124 P.2d 44), again followed the nonexclusionary rule; (it similarly followed that rule in the later decisions of People v. Kelley, 22 Cal.2d 169 (137 P.2d 1), and People v. Haeussler, 41 Cal.2d 252 (260 P.2d 8). Consistent adherence to the non-exclusionary rule has been further demonstrated by the denial of petitions for hearing by this court in numerous cases, only a few of which need be cited. (People v. Peak, 66 Cal.App.2d 894 (153 P.2d 464); People v. One 1941 Mercury Sedan, 74 Cal.App.2d 199 (168 P.2d 443); People v. Oreck, 74 Cal.App.2d 215 (168 P.2d 186); People v. Tucker, 88 Cal.App.2d 333 (198 P.2d 941); People v. Sica, 112 Cal. App.2d 574 (247 P.2d 72); People v. Allen, 115 Cal. App.2d 745 (252 P.2d 968).

"A reading of the above-mentioned authorities shows that this court has previously considered practically every argument now advanced for the adoption of the so-called exclusionary rule and has consistently determined that such arguments were outweighed by those advanced in favor of the nonexclusionary rule. In adopting and adhering to the nonexclusionary rule, the law of the State of California has thereby been kept in harmony with the law of the great majority of the other states and of all the British commonwealths; as well as in line with the considered views of the majority of the most eminent legal scholars. Only the federal courts of a relatively few states have adopted the judicially created exclusionary rule. (See appendix to Wolf v. Colorado, 338 U.S. 25 (69 S.Ct. 1359, 93 L.Ed. 1782). It therefore appears that the great majority of the legal minds which have dealt with this problem have been in accord with the views

expressed by our predecessors on this court and with the views expressed by the majority of the present members of this court as declared in People v. Gonzales, supra, 20 Cal.2d 165, and our other recent decisions. But despite this great wealth of legal precedent pointing to the desirability of the continuance of the nonexclusionary rule, the majority of this court now does a judicial turnabout and declares that "People v. Le Doux, 155 Cal. 535 (102 P. 517), People v. Mayen, 188 Cal. 237 (205 P. 435, 24 A.L.R. 1383), and the cases based thereon are therefore overruled." This is a forthright declaration but, with all due deference to the views of the majority, I cannot join in it.

"I agree with the majority that ... in the absence of a holding by the United States Supreme Court that the due process clause requires exclusion of unconstitutionally obtained evidence, whatever rule we adopt, whether it excludes or admits the evidence, will be a judicially declared rule of evidence. The United States Supreme Court has never held that the due process clause requires such exclusion but, on the contrary, has indicated that the federal exclusionary rule 'is a judicially created rule of evidence which Congress might negate.' (Concurring opinion of Black J., in Wolf v. Colorado, supra, 338 U.S. 25, 40.) California, in line with the great weight of authority, has always applied the nonexclusionary rule, and if there is any virtue in the doctrine of stare decisis, this court should not overturn this firmly established rule in the absence of compelling reasons for such change. The difference in point of view stems from the fact that the majority apparently have found compelling reasons for such change while I have not.

"If the question were an open one in this state, I would still be of the opinion that the nonexclusionary rule should be judicially declared to be the rule in California. The expression of this view does not signify that I condone any illegal search or seizure by any enforcement officer-federal, state or local-or by any other person. On the contrary, the constitutional and statutory rights of every citizen should be respected and protected. The law of this state provides both criminal sanctions (Pen. Code, 146) and civil remedies for the violations of such rights; and it has been declared that the federal statutes cover violations by any person of the federal constitutional provisions. (Irvine v. California, 347 U.S. 128, 138 (74 S.Ct. 381, 98 L.Ed. 561). Hence, the main question presented in criminal proceedings of this nature is whether the exclusionary rule, in the light of such relative advantages and disadvantages which may result from its adoption, should be preferred to the nonexclusionary rule. In determining this question we may well consider the experience under the federal rule.

"The experience of the federal courts in attempting to apply the exclusionary rule does not appear to commend its adoption elsewhere. The spectacle of an obviously guilty defendant obtaining a favorable ruling by a court upon a motion to suppress

evidence or upon an objection to evidence, and thereby, in effect, obtaining immunity from any successful prosecution of the charge against him, is a picture which has been too often seen in the federal practice. In speaking of an obviously guilty defendant, I refer by way of example to one from whose home has been taken large quantities of contraband, consisting of narcotics or other commodities, the very possession of which constitutes a serious violation of the law. The above-mentioned result, however, is the inevitable consequence of the application of the federal exclusionary rule in those cases in which it may be ultimately determined that a search or seizure has been made illegally, either because of the absence of a search warrant or because of some technical defect in the affidavit upon which the warrant was based. Furthermore, under the present federal practice, the trial of the accused is interrupted to try the question of whether the evidence was in fact illegally obtained. This question is often a delicate one, and the main trial is at least delayed while the question of whether some other person has committed a wrong in obtaining the evidence has been judicially determined; and if the claim of the accused is sustained, the prosecution of the case against the accused, regardless of the fact that his guilt may appear clear, is often frustrated. The delicacy of the question results from the fact that there is still great uncertainty in the law as to the precise circumstances which will render a search or seizure 'unreasonable,' and as to the precise nature of the defects in the affidavit which will render invalid a search warrant.

"It would serve no useful purpose to reiterate all the arguments which have been advanced against the adoption of the exclusionary rule. They have been set forth in numerous authorities cited in the majority opinion in the present case and in the appendix to Wolf v. Colorado, supra, 338 U.S. 25. With commendable frankness, many of these arguments are summarized in the majority opinion here. They were discussed extensively in a learned opinion by Justice Cardozo in People v. Defore, 242 N.Y. 13 (150 N.E. 585, 44 A.L.R. 510), where the court unanimously decided against its adoption. And while it may be an overstatement to say, as does Dean Wigmore, that the exclusion of such evidence is based upon 'misguided sentimentality' (Wigmore on Evidence, 3d ed., vol. VIII, 2184, p. 36), it is significant that this learned writer should have felt impelled to make such statement. The fact is that the courts have been put to a difficult choice, but there is no doubt that the great majority of courts have determined that the cost of the adoption of the exclusionary rule is too great when compared to the relatively little good that it can accomplish.

"The only new argument for the adoption of the exclusionary rule is based upon the fact that the United States Supreme Court has again spoken on the subject in Irvine v. California, supra, 347 US. 128. There the court was again divided, with the dissenting justices, under the particular facts of that case, advocating a reversal but with no unanimity as to the reasons for such reversal.

The majority nevertheless affirmed the judgment of conviction and sustained the rule of Wolf v. Colorado, supra, 338 U.S. 25. While arguments in favor of any approach to the problem there presented may be found in the opinions of the several justices, I find nothing in the main opinion which would indicate the compulsion for, or desirability of, a change in the established rule in the state. On the contrary, I find statements in the main opinion which give cogent reasons for adhering to the nonexclusionary rule.

"In the Irvine case, the main opinion states at page 134: 'The chief burden of administering criminal justice rests upon state courts. To impose upon them the hazard of federal reversal for non-compliance with standards as to which this Court and its members have been so inconstant and inconsistent would not be justified. We adhere to Wolf as stating the law of search-and-seizure cases, and decline to introduce vague and subjective distinctions.'

"Again on pages 136 and 137, it is said in the main Irvine opinion: 'It must be remembered that petitioner is not invoking the Constitution to prevent or punish a violation of his federal right recognized in Wolf or to recover reparations for the violation. He is invoking it only to set aside his own conviction of crime. That the rule of exclusion and reversal results in the escape of guilty persons is more capable of demonstration than that it deters invasions of right by the police. The case is made, so far as the police are concerned, when they announce that they have arrested their man. Rejection of the evidence does nothing to punish the wrong-doing official, while it may, and likely will, release the wrong-doing defendant. It deprives society of its remedy against one lawbreaker because he has been pursued by another. It protects one against whom incriminating evidence is discovered, but does nothing to protect innocent persons who are the victims of illegal but fruitless searches. The disciplinary or educational effect of the court's releasing the defendant for police misbehavior is so indirect as to be no more than a mild deterrent at best. Some discretion is still left to the states in criminal cases, for which they are largely responsible, and we think it is for them to determine which rule best serves them.'

"The above-quoted language from the main opinion in the Irvine case shows that there is relatively little to be said in favor of the exclusionary rule. If that rule is 'no more than a mild deterrent at best' and if 'It deprives society of its remedy against one lawbreaker because he has been pursued by another,' it seems clear that little good and much harm can come from its adoption. The above-quoted language also shows that this court is under no compulsion to reverse its former holdings and to adopt the federal exclusionary rule.

"Furthermore, I cannot ascertain from the majority opinion in

the present case the nature of the rule which is being adopted to supplant the well established nonexclusionary rule in California. Is it the exclusionary rule as interpreted in the federal courts with all its technical distinctions, exceptions, and qualifications and embracing 'standards to which (the United States Supreme) Court and its members have been so inconstant and inconsistent.' (Irvine v. California, supra, 347 U.S. 128, 134). Apparently not, for the majority opinion here assumes the validity of the contention that "the federal exclusionary rule has been arbitrary in its application and has introduced needless confusion into the law of criminal procedure." But after making passing reference to possible "needless refinements and distinctions" and 'needless limitations' found in the federal cases, the majority declares that this court is free to reject the rules established by such cases, and it concludes as follows: 'Under these circumstances, the adoption of the exclusionary rule need not introduce confusion into the law of criminal procedure. Instead it opens the door to the development of workable rules governing searches and seizures and the issuance of warrants that will protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime.'

"The majority does not suggest what these 'workable rules' may be nor how 'confusion' may be avoided. Neither the federal courts nor the courts of any of the few states which adopted the exclusionary rule have apparently found a satisfactory solution to this problem of developing 'workable rules,' and it seems impossible to contemplate the possibility that this court can develop a satisfactory solution. At best, this court would have to work out such rules in piecemeal fashion as each case might come before it. In the meantime, what rules are to guide our trial courts in the handling of their problems? If the nonexclusionary rule can be said to have one unquestioned advantage, it is the advantage of certainty. On the other hand, it appears that the exclusionary rule, in the many ramifications of its application to innumerable factual situations, is fraught with such difficulty as to make the formation of satisfactory, certain and workable rules a practical impossibility.

"Much of the above discussion has been directed to the undesirability of adopting the exclusionary rule if the question were a novel one in this state. Of course, the question is not a novel one, for the numerous decisions show that this state had heretofore adopted a fixed and consistent policy on the subject. I find nothing that has occurred since the recent decisions of this court in People v. Gonzales, supra, 20 Cal.2d 165, People v. Kelley, supra, 22 Cal.2d 169, and People v. Haeussler, supra, 41 Cal.2d 252, to furnish compelling reasons for this court to enunciate a change of that policy.

"If, however, reasons may be said to exist for a change in the established policy of this state, I believe that the Legislature,

rather than the courts, should make such change. This is particularly true in a situation such as the present one, when the change of policy should be accompanied by 'workable rules' to implement such change. Otherwise, this court, by the sweeping repudiation of its past decisions, launches the administration of justice upon an uncharted course which the trial courts will find great difficulty in following. In this connection, it is worthy of note that bills have frequently been introduced in the Legislature to accomplish precisely that which is accomplished by the majority opinion, to wit: the supplanting of the nonexclusionary rule by the so-called exclusionary rule, without prescribing any 'workable rules' for the latter's application. In the recent legislative sessions of 1951 (see Senate Bill No. 1689 and Assembly Bill No. 3120) and of 1953 (see Assembly Bills Nos. 2896 and 3126), such bills have been introduced but none has ever been brought to a vote in either house. Under the circumstances, it would be far better for this court to allow the Legislature to deal with this question of policy, for the Legislature could accompany any desired change with needed legislation establishing the rules to guide our courts in the application of the new policy.

"Returning to the precise situation presented by the record before us, it may be conceded that the illegality in obtaining the evidence was both clear and flagrant. It may be further conceded that the crimes which defendants conspired to commit were not in the class of the more serious public offenses. The fact remains, however, that the exclusionary rule, as adopted by the majority, is a rule for all cases and that it deprives society of its remedy against the most desperate gangster charged with the most heinous crime merely because of some degree of illegality in obtaining the evidence against him. Thus, it appears that the main beneficiaries of the adoption of the exclusionary rule will be those members of the underworld who prey upon law-abiding citizens through their criminal activities. It further appears that the adoption of the exclusionary rule will inevitably lead to unnecessary confusion, delay and inefficiency in the administration of justice. Such is the price that society must pay for the adoption of the exclusionary rule, a rule of uncertain nature and doubtful value which is 'no more than a mild deterrant at best.'

"In my opinion, the cost of the adoption of the exclusionary rule is manifestly too great. It would be far better for this state to adhere to the nonexclusionary rule, and to reexamine its laws concerning the sanctions to be placed upon illegal searches and seizures. If the present laws are deemed inadequate to discourage illegal practices by enforcement officers, the Legislature might well consider the imposition of civil liability for such conduct upon the governmental unit employing the offending officer, in addition to the liability now imposed upon the officer himself. It might also consider fixing a minimum amount to be recovered as damages in the same manner that a minimum has been fixed for the invasion of other civil rights. (Civ. Code 52). These methods

would be far more effective in discouraging illegal activities on the part of enforcement officers and such methods would not be subject to the objection, inherent in the adoption of the exclusionary rule, that 'It deprives society of its remedy against one lawbreaker because he has been pursued by another.' (Irvine v. California, supra, 347 U.S. 128, 136.)

"In my opinion, we should adhere to our prior decisions and affirm the judgment."

RULES REQUIRING REVEALING NAMES OF CONFIDENTIAL INFORMANTS SHOULD BE CHANGED

After the four judges of the Supreme Court enacted the exclusionary rule, the Supreme Court then proceeded to enact a set of new rules requiring that the police reveal the names of confidential informants to defendants in numerous types of cases. The Supreme Court provided that if the police chose not to reveal the name of the confidential informant, that then the case would have to be dismissed against the defendant and he would be permitted to go free no matter how overwhelming the evidence of guilt might be. The Supreme Court said that the reason for requiring the prosecution to reveal the name of the confidential informant to the defendant was because the defendant might decide to call the informant as a witness to give testimony in behalf of defendant.

Prior to the exclusionary rule, defendants did not seek to legally force the prosecution to reveal the names of confidential informants because their names would have no strategic legal value to them. The defendants had no intentions of calling any informants to testify in behalf of defendants for they were fully aware of the obvious and that was that the testimony of the informants would be unfavorable to the defendants. Although some defendants would have liked to have learned the names of informants for the purpose of taking revenge against them, the defendants had no desire to call informants who had squealed on them as witnesses to testify in behalf of defendants. In fact the desire of defendants was just the opposite; they hoped that the informants would disappear or die so that they wouldn't be available to the prosecution as extra witnesses to testify against them. Defendants viewed these informants as people who had squealed on them and therefore their enemies; they certainly didn't want to call them as witnesses. And many times the defendants actually knew who the informants were. There are probably no recorded cases in which any defendants ever called any informants as witnesses to testify.

But as soon as the Supreme Court enacted the rule that the

prosecution must incur a dismissal of the case if the prosecution refuses to reveal the name of the informant, then the defendants suddenly became greatly interested in demanding the names of informants. The defendants suddenly claimed that they needed the names of the informants because they were going to call them as witnesses to testify for them. The defendants knew that the prosecution would frequently prefer to have the case dismissed rather than take the chance that revenge might be taken against the informer for informing. Defendants also knew that frequently the informer is also useful in future cases, and his usefulness would be destroyed if the prosecution had to reveal his name and that often the prosecution would prefer to incur the dismissal rather than reveal the name of the informant. This all gave to the defendants a great lever by which they could frequently obtain their freedom by simply demanding to know the name of the informant.

Revealing the names of informants creates risks of retaliation to them and their families and sometimes causes citizens, out of fear of vengeance, to fail to inform the police about crime. It is easy for citizens to take the attitude of why should I inform on some defendant and take the chance that my name will be revealed as the informant and thus create danger of death or serious injury to myself or family as a result of retaliation. The government needs the cooperation of its citizens to suppress crime and should encourage citizens to report crime to the police rather than to discourage them from doing so by requiring that their names be revealed. Most citizens would prefer that their names not be revealed as being the informant with its attendant risks.

As a practical matter, the only legal reasons why these defendants ever want to make the prosecution reveal the name of the informant is to cause the prosecutor to incur a dismissal of the case rather than reveal or to get the informant into court and cause him to testify only on the exclusionary issue of what information he told the officer for the purpose of trying to show that the officer made an unreasonable search and thus prevent the officer from giving evidence of what he saw or found during the search. None of this has anything to do with deciding the guilt or innocence of the defendant; it is an effort to suppress evidence being presented on that issue. The defendants don't want to call the informants as witnesses on the issue of their guilt or innocence for they know their testimony would be unfavorable. The informer rule is used by the defendants as a lever to either get the case dismissed or suppress evidence being presented against them under the exclusionary rule by trying to show that the information furnished by the informant to the officer didn't make the search reasonable.

The exclusionary rule should not exist as mentioned before. The rule requiring revealing the names of informants or dismiss the case should not exist for it is not true that the defendants want to call the informants as witnesses in their behalf on the

issue of guilt or innocence. Such thinking is farcical. Defendants are being permitted to hide behind a mask of untruth. The defendants would hate to see any of these informants walk into court as witnesses that they were to call on their behalf on the issue of guilt or innocence. There probably isn't a recorded case in which a defendant called a confidential informant to the witness stand to testify in behalf of the defendant on the issue of guilt or innocence.

It could be provided that the name of the informer need not be revealed unless the defendant presented convincing evidence to the trial judge that there is pressing necessity to have the testimony of the informant on the issue of guilt or innocence and that the informant intends to call him as a witness; the judge could be given complete discretion on the matter. Or it could be provided that the judge be given authority to conduct an informal inquiry into whether it is in the interests of justice that the informant be compelled to be a witness and that the judge have complete discretion on the matter.

* * * * * * * * *

Senate Bill 81, Chapter 11, as it would read including the Amendments of May 3

CHAPTER 11

Commitment and Corrective Treatment of Narcotics Addicts

ARTICLE I - ADMINISTRATION

6400. The narcotic detention, treatment and rehabilitation facility referred to herein shall be one within the Department of Corrections whose principal purpose shall be the receiving, segregation, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any agency thereof who are or have been addicted to narcotics or who by reason of repeated use of narcotics are in imminent danger of becoming addicted.

6401. An escape from the California Rehabilitation Center by any person confined therein shall be deemed an escape from a state prison.

6402. The director may enter into agreements with the Director of Mental Hygiene pursuant to which persons committed to the custody of either for narcotic addiction or imminent narcotic addiction can be transferred to an institution under the jurisdiction of the other.

6403. After an initial confinement of six months and subject to rules and policies established by the Director of Corrections, whenever a person committed under Article 2 or Article 3 of this chapter has recovered from his addiction or imminent danger of addiction to such an extent that in the opinion of the Director of Corrections such person is worthy of an opportunity on parole, the Director shall certify such fact to the Adult Authority. Upon such certification, the Adult Authority may release such person upon parole subject to all the parole rules and regulations, and subject to being retaken and reconfined in the same manner as other parolees are retaken. Wherever the words "Adult Authority" are used in this chapter it shall be deemed to refer to the Board of Trustees of the California Institution for Women with respect to females.

6404. The parole rules shall include, but not be limited to, close supervision of the parolee after release from the facility, periodic and surprise testing for narcotic use, counseling and

return to inpatient status at the narcotic detention and treatment facility at the discretion of the Adult Authority if from the reports of the parole officer, or other evidence as to the conduct of the parolee, the Adult Authority concludes that it is for the best interests of the parolee and society that this be done. The Director of Corrections is authorized to establish a halfway house in a large metropolitan area as a pilot project in order to determine the effectiveness of such control upon the addict's rehabilitation, particularly upon his release from the narcotic detention and treatment facility. Rules and regulations governing the operation of such halfway house shall be established by the Director of Corrections and shall provide for control of the earnings of parolees during their residence in such halfway house, from which shall be deducted such charges for maintenance as the Director of Corrections may prescribe.

6405. The Director of the Department of Corrections shall engage in a program of research in the detention, treatment and rehabilitation of narcotic addicts.

6406. No commitment under Article 2 or 3 of this chapter shall be ordered until such time as the Director of Corrections designates a place or places for the reception of persons committed thereunder and unless space is available therein.

6407. "Narcotic addict" as used in this chapter means any person, whether adult or minor, who habitually and unlawfully uses any narcotic as defined in Division 10 of the Health and Safety Code, except marijuana.

Article 2. Involuntary Commitment of Persons Charged with a Crime

6450. Upon conviction of a defendant of any crime in a municipal or justice court, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend the imposition of the sentence and certify the defendant to the superior court.

The superior court shall direct the sheriff to file a petition to ascertain if such defendant is addicted to narcotics or is in imminent danger of becoming addicted thereto. Proceedings shall be conducted in substantial compliance with Sections

5353, 5053, 5054 and 5055 of the Welfare and Institutions Code.

If, after a hearing and examination, the judge shall find that the defendant charged is a narcotic drug addict, or by reason of repeated use of narcotics is in imminent danger of becoming addicted thereto, and is not ineligible for the program under the application of Section 6452 hereof, he shall make an order committing such defendant to the custody of the Director of Corrections for a period of five years, except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic drug addict and is not in imminent danger of becoming addicted to narcotics, he shall so certify and return the defendant to the municipal or justice court which certified such defendant to the superior court for such further proceedings as the judge of such municipal or justice court deems warranted.

6451. Upon conviction of a defendant for any crime in any superior court, if the judge ascertains that the defendant is addicted or by reason of repeated use of narcotics is in imminent danger of becoming addicted to narcotics he shall adjourn the proceedings or suspend the imposition of the sentence and direct the sheriff to file a petition to ascertain if such person is addicted to narcotics or in imminent danger thereof unless in the opinion of the judge the defendant's record indicates such a pattern of criminality that he does not constitute a fit subject for commitment under this section. If a petition is ordered filed, proceedings shall be conducted in substantial compliance with Sections 5353, 5053, 5054 and 5055 of the Welfare and Institutions Code.

If, after a hearing and examination, the judge shall find that the person charged is a narcotic drug addict, or by reason of repeated use of narcotics is in imminent danger of becoming addicted to narcotics, he shall make an order committing such person to the custody of the Director of Corrections for confinement in the facility for a period of 10 years, except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict or is not in imminent danger of becoming addicted to narcotics, he shall so certify and return the defendant to the department of the superior court which directed the filing of the petition for such further proceedings on the criminal charges as the judge of such department deems warranted.

6452. The foregoing section shall not apply to persons convicted of, or who have been previously convicted of murder, kidnaping, robbery, burglary in the first degree, mayhem, assault with intent to commit murder, attempt to commit murder, a violation of Section 245 or a violation of any provision of Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code, but excepting subdivision 1 of Section 261, any felonies involving bodily harm or attempt to inflict bodily harm or any offense set forth in Article 1 (commencing with Section 11500) or 2 (commencing with Section 11530) of Chapter 5 of Division 10 of the Health and Safety Code, or in Article 4 (commencing with Section 11710) of Chapter 7 of such Division 10 for which the minimum term prescribed by law is more than five years in state prison.

6453. If at any time the Director of Corrections concludes that the person is not a fit subject for confinement or treatment in such narcotic detention, treatment and rehabilitation facility, he shall return the defendant to the court in which the case originated for such further proceedings on the criminal charges as that court may deem warranted.

6454. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code.

Article 3. Involuntary Commitment of Persons Not Charged with a Crime

6500. A sheriff, chief of police, minister, physician, probation officer, a relative or friend or any other person who believes that a person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use or any person who believes himself to be addicted or about to become addicted may report such belief to the district attorney who may petition the superior court for a commitment of such person to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

6501. Every person who knowingly contrives to have any person adjudged a narcotic addict under this article, unlawfully or improperly, is guilty of a misdemeanor.

[illegible] the foregoing provision shall not apply to persons convicted of, or who have been previously convicted of murder, kidnaping, robbery, burglary in the first degree, mayhem, assault with intent to commit murder, attempt to commit murder, [illegible] of Section 245 or a violation of any provision of Chapter 1 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, [illegible] subdivision [illegible] of Section 261, any felonies involving bodily harm - [illegible] attempt to inflict bodily harm on any [illegible] Article 2 (commencing with Section 11500) [illegible] (commencing with Section [illegible]) or Chapter 5 of Division 10 of the Health and Safety Code, [illegible] Article 4 (commencing with Section [illegible]) [illegible] Chapter 7 of such Division 10 for which the minimum term prescribed by law is more than five years in state prison.

3053. If at any time the Director of Corrections concludes that the person is not a fit subject for confinement or treatment in such narcotic detention, treatment and rehabilitation facility, he shall return the defendant to the court in which the case originated for such further proceedings on the criminal charges as that court may deem warranted.

3054. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code.

Article 3. Involuntary Commitment of Persons Not Charged with a Crime

3100. A sheriff, chief of police, minister, physician, probation officer, [illegible] relative or friend or any other person who believes that a person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use or any person who believes himself to be addicted [illegible] may report such belief to the district attorney who may petition the superior court for a commitment of such person to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

3101. Every person who knowingly contributes to [illegible] any person adjudged a narcotic addict under this article, unlawfully or improperly, is guilty of a misdemeanor.

6502. Upon the filing of a proper petition pursuant to Section 6500, the court shall order the person sought to be committed to be examined by a physician or physicians, by order similar in form to the order for examination prescribed by Section 5050.1 of the Welfare and Institutions Code. The court may also order that the person be confined pending hearing in a county hospital or other suitable institution if the petition is accompanied by the affidavit of a physician alleging that he has examined such person within three days prior to the filing of the petition and has concluded that, unless confined, such person is likely to injure himself or others or become a menace to the public.

6503. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the person.

6504. The report of the examination by the physician shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall order the petition dismissed. If the report is to the effect that the person is addicted or in imminent danger of addiction, the court shall set a time and place of hearing and cause notice thereof to be served on the person.

6505. The court may issue subpoenas for attendance of witnesses at the hearing and the person sought to be committed will have the right to have subpoenas issued for such purpose. At the hearing the person shall have the right to be represented by counsel, to present witnesses on his behalf, and to cross-examine witnesses. If he is unable financially to employ counsel, the court may appoint counsel for him.

6506. At the hearing the court shall determine whether the person is addicted to the use of narcotics or in imminent danger of addiction. If that issue is determined in the negative, the petition shall be denied. If the issue is determined in the affirmative, the court shall order the person committed to the custody of the Director of Corrections for a period of five years, except as this chapter permits earlier discharge.

6507. Hearings may be waived by consent of the person sought to be committed, expressed in open court.

6508. If the person so committed or any friend in his behalf is dissatisfied with the order of the court, he may demand a hearing by judge or jury in substantial compliance with the provisions of Section 5125 of the Welfare and Institutions Code.

6509. If at any time the Director of Corrections concludes that a person committed pursuant to this article is not a fit subject for confinement or treatment in a facility of the Department of Corrections, he may order such person discharged.

6510. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code.

Article 4. Discharge of Narcotic Addicts

6520. If at any time the Adult Authority is of the opinion that a person committed pursuant to Article 3 of this chapter while on parole has abstained from the use of narcotics for at least three consecutive years and has otherwise complied with the conditions of parole it shall discharge such person from the program.

If at any time the Adult Authority is of the opinion that a defendant committed pursuant to Article 2 of this chapter while on parole has abstained from the use of narcotics for at least three consecutive years and has otherwise complied with the conditions of parole it may file with the superior court of the county in which the defendant was committed a certificate alleging such facts and recommending to the court the discharge of the defendant from the program. The Adult Authority shall serve a copy of such certificate upon the district attorney of the county. Upon filing such certificate the court shall discharge the defendant from the program and may dismiss the criminal charges of which such defendant was convicted. Where such defendant was certified to the superior court from a municipal or justice court, the defendant shall be returned to such court, which may dismiss the original charges. If the original charges are not dismissed and the defendant is sentenced thereon, time served while under commitment pursuant to Article 2 of this chapter shall be credited on such sentence. Such dismissal shall have the same force and effect as a dismissal under Section 1203.4 of the Penal Code.

Narcotics

JOHN M. PRICE
DISTRICT ATTORNEY

OFFICE OF
DISTRICT ATTORNEY
SACRAMENTO COUNTY
ROOM 204, COURT HOUSE
SACRAMENTO 14, CALIFORNIA

OSCAR A. KISTLE
CHIEF DEPUTY

February 8th, 1961.

Dear Elmer

This is a letter addressed to every member of the Joint Committee on Law and Legislation of the Peace Officers and District Attorneys Associations. It constitutes my own personal observations.

On February 16th the Joint Committee will meet in Sacramento and make decisions on a variety of bills - the most important of which is obviously the "Narcotics Legislation." If we make a mistake on which narcotic bills to throw our united support, in my opinion, our whole legislative program may go down the tubes. This is the legislative year for narcotics. With a common sense approach we ought to be on the winning side.

In June, 1960 Hal Kennedy sold the District Attorneys Association on the Los Angeles program. It is a good program. At the same time the Attorney General and Senator Regan advised us to lay off modification of the Cahan decision. We adopted the Los Angeles program any way. The Peace Officers and Sheriffs Association have followed suit and we were all in agreement as of December 9th in Los Angeles. By this time the Attorney General agreed not to oppose a modification.

Senator Regan introduced our legislative program on narcotics in toto in the opening days of the legislative session as did Bruce Allen in the Assembly.

Then the Board of Supervisors of Los Angeles adopted a new and "tougher" program of penalties in January of 1961. On January 27th the Law and Legislative Committee of the Peace Officers Association adopted the new Los Angeles program. I think we have priced ourselves right out of the penalty market.

Take a good look at the new proposed penalty schedule and compare it with that for armed robbery and second degree murder. Don't we look a little absurd getting so "far out?"

If this program passes and proves unworkable who do you think will get the blame? If we pitch for it and get bogged down in compromises we may get nowhere.

In the meantime we've lost sight of the most important part of the whole program - the abolition of Cahan in narcotics cases.

The theory that this legislature is going for the toughest possible penalty schedule is pure fancy. That we look better by going for this schedule and then trade is unrealistic.

Legislators are responsive to public opinion but are not about to be swept away by the hysteria evident in the latest Los Angeles proposal. Why not stick to workable proposals that heretofore had united support in our own associations?

We have been advised by sponsors of our legislation that we make a mistake in trying for the new Los Angeles penalty schedule. Why not take their advice for a change and get some legislation through a heavily Democratic legislature in 1961 instead of our looking like splendid delegates of the Sun King?

I would urge members of the Law and Legislative Committee of Peace Officers to re-evaluate their stand on February 16th.

Very truly yours,

John

JOHN M. PRICE,
District Attorney.

JMP/s

March 3, 1961

Mr. A. Morrison, Chief Deputy
Legislative Counsel
3021 State Capitol
Sacramento, California

Dear Sir:

We would very much appreciate your forwarding us a copy of the Legislative Counsel's opinion pertaining to the constitutionality of a proposed statute that would modify the Cahan decision with respect to narcotics. This opinion was given on or about March 20, 1960.

Thank you for any consideration you may give to this request.

Yours very truly,

ARTHUR L. ALARCON
Project Director
Special Study Commission
on Narcotics

By:
LYONEL L. CHEW
Field Representative

LLC:ms

GOVERNOR BROWN'S 1961 NARCOTICS PROGRAM

The Dills-Regan Bill

On May 5, 1961, Governor Edmund G. Brown signed into law the toughest narcotics program in the history of this state. The passage of the Dills-Regan Bill was hailed by the Los Angeles Times of March 10, 1961, in a headline proclaiming "BROWN SCORES VICTORY IN WAR ON NARCOTICS."

By tripling of the minimum penalties for most narcotics violations, law enforcement and society have been provided with a new weapon in the war on the vicious evil of narcotics addiction aimed directly at the peddlers.

These hard fisted penalties were first called for by Governor Brown in his Biennial Message to the California Legislature delivered on January 3, 1961.

The Governor told the members of the Senate and the Assembly meeting in joint session that a special Commission on Narcotics which he had appointed had submitted "a well-documented foundation for aggressive action against the sinister dope traffic." He said,

> "I am especially impressed with the Commission's case for harsher penalties and longer terms of imprisonment for narcotics offenders. I urge the Legislature to take direct action to guarantee that peddlers will no longer feel that the penalty is worth risking because the crime is so profitable." (Biennial message to the California Legislature by Governor Edmund G. Brown - January 3, 1961.)

On February 28, 1961, Governor Brown sent a special message to the Legislature setting forth an eight point narcotics program. First on his program was endorsement of legislation (A.B. No. 9 by Assemblyman Clayton Dills and S.B. 83 by Edwin J. Regan) providing a substantial increase in prison terms and penalties. The Dills-Regan Bill went into effect on September 15, 1961, and provided:

> * The punishment for a narcotics peddler with no prior record is five years to life. He cannot be released to parole in less than three years.
>
> * Any peddler with one prior narcotics conviction must be sentenced to prison from ten years to life. He cannot be released on parole until he has served in prison every day of the minimum ten year sentence.
>
> * A narcotics peddler who has a record of two prior convictions for narcotics offenses must be sentenced to prison for fifteen years to life with no possibility of parole until he has served the full fifteen year minimum term in prison.

The goal of the Governor in advocating these stern penalties was to put all the present narcotics peddlers out of circulation long enough to convince them that peddling narcotics in California is risky business and very unprofitable. Also it is the hope of the Governor that these laws will serve to deter newcomers from engaging in the narcotics traffic.

Also incorporated in the Dills-Regan bill were recommendations by Governor Brown providing:

* that possession of narcotics for the purpose of sale be made a crime in California.

* that all narcotics offenders must register in the city in which they reside within 30 days of establishing residency.

* Any person convicted of a narcotics offense loses the privilege in California of operating an automobile -- the chief means used for transporting and smuggling illegal narcotics.

As part of his program to fight the menace of narcotics Governor Brown also successfully urged that the Legislature increase the budget of the Bureau of Narcotics Enforcement by $183,000 to provide the funds necessary to spearhead an all out relentless drive against the major narcotics peddlers in every part of the state of California and to assist smaller police agencies in stamping out narcotics activity wherever it may flare up.

Under California's indeterminate sentence laws, the Adult Authority is charged with the responsibility of fixing the date for the release of all male prisoners to parole supervision. To make sure the Adult Authority clearly understood his own determination that every narcotics peddler receive his full measure of punishment under the Dills-Regan Bill, Governor Brown addressed a letter to the Adult Authority on October 4, 1961, in which he made clear his view that the protection of society should be the first concern in considering parole for narcotics offenders. He said unless it can be guaranteed that a parolee has been rehabilitated, parole should not be granted after the minimum term has been served, and "swift revocation of parole should follow the first indication of involvement in the traffic of narcotics."

Addict Rehabilitation Act

In addition to calling for tough laws aimed at putting the narcotics peddler out of business in California, Governor Brown asked that the Legislature enact realistic laws which would deal firmly but humanely with California's addicts so as to prevent them from spreading the dread infection of narcotics addiction.

The Governor's Special Study Commission on Narcotics reported that our federal, state, and local programs for treating and controlling narcotic addicts were grossly inadequate and almost totally ineffective.

In California up to September 15, 1961, most of the addicts who came to the attention of the authorities were thrown into the county jail, given little or no medication and treatment, and then released after a minimum 90 day sentence had been served, only to be rearrested because of a quick return to the use of narcotics. This revolving door method of handling addicts was not only wasteful of the taxpayer's money but it was a total failure in reducing the problem of narcotics addiction.

On February 28, 1961, Governor Brown recommended that the Legislature enact legislation to establish a completely new procedure for addict commitment and control as recommended by the Narcotics Commission.

The 1961 Legislature overwhelmingly approved the Governor's recommendation and enacted into law Senate Bill No. 81 which sets up the California Rehabilitation Center for the quarantine and rehabilitation of narcotics addicts.

Under this new addict control law addicts can be taken off the streets and confined in the Rehabilitation Center from a mandatory minimum of six months up to ten years. Those addicts who respond to treatment will be paroled to a "halfway house" in their own community. There the addict may leave to work during the day but must return each night where he can be observed and closely supervised by parole agents. The cost of housing and supervision will be deducted from his wages. Upon his return to his home, he will still be subjected to close supervision by specially trained parole agents. In addition the addict must submit to periodic surprise chemical tests to determine if he has returned to the use of narcotics.

Those addicts who do not appear to benefit from the treatment offered at the Rehabilitation Center and who therefore cannot be trusted on parole, will be safely quarantined and kept away from society up to the maximum ten years.

Plans have been completed and approved and the money allocated to provide a 2,000 bed institution for the quarantine and treatment of addicts under this statute.

California's humane answer to the problem of isolating and treating narcotics addicts while at the same time giving full protection to society has received enthusiastic praise from one of the nation's most prominent prosecutors, New York District Attorney Frank Hogan. In a letter dated September 8, 1961, Hogan congratulated Governor Brown and the Legislature for "the breadth of vision" that the new narcotics law expresses, and said the District Attorneys' Association of the State of New York is pressing for similar legislation for their state.

THE CAHAN DECISION

On April 27, 1955, the California Supreme Court in the case of People v. Cahan 44 Cal. 2d 434, adopted federal rule that any evidence obtained in violation of the constitutional guarantees against unreasonable searches and seizures would be inadmissible as evidence in a criminal case.

The United States Supreme Court had imposed the same rule on all federal prosecutions forty-one years earlier in Weeks v. United States (1914) 232 U.S. 383.

At the time of the Cahan decision, Governor Brown was the Attorney General of California. As Attorney General, he had prepared the brief in opposition to Cahan's argument that his conviction should be reversed because of an alleged violation of his constitutional rights by the police in collecting the evidence introduced against him.

The Supreme Court's ruling in the Cahan case caused great concern among law enforcement officials that this law would seriously handicap law enforcement.

Immediately after the decision, Governor Brown created two committees of prominent law enforcement officials to study the impact of the Exclusionary Rule on law enforcement. These committees found that most of the laws of arrest and search warrants had not been amended or revised since 1872. As an example of the need for revision after the Cahan ruling, the committee found that under an 1872 statute a law enforcement officer could not obtain a search warrant to seize items of evidence tending to show the guilt of suspect.

Governor Brown personally appeared before the 1957 Legislature to urge successfully the passage of laws patterned after the recommendations of this special law enforcement committee. (These 1957 amendments to the laws of arrest and search warrants can be found in Penal Code Sections 833, 834a, 835, 835a, 836, 841, 842, 847, 849, 850, 851 and 1524.)

Appellate Court Interpretations

When the Cahan case was first announced Governor Brown expressed his concern that the Exclusionary Rule might result in the blocking of effective law enforcement, especially in the war against the narcotics traffic.

Following the Cahan decision, the Attorney General's office petitioned for a rehearing to seek a clarification of the undefined "workable rules" which the Court had indicated would follow.

As the California appellate courts spelled out the "workable rules", Governor Brown became convinced that the rigid, restrictive

interpretations of the rule of exclusion of evidence which he had feared, did not materialize. Instead the appellate courts have proved by their decisions that they are fully cognizant of the problems faced by law enforcement officers who must often act quickly under dangerous circumstances.

Since the Cahan decision on April 27, 1955, the appellate courts in California have decided a total of 426 cases as of November 21, 1961, involving the constitutionality of the search and seizure conducted by the police. In 93.19% of these cases the courts have ruled that the police acted reasonably.

Proposed Nullification of Cahan Decision

The 1961 Legislature was urged by some law enforcement officials to enact legislation which would have nullified the Cahan decision.

Governor Brown, now satisfied that the appellate courts had not hampered law enforcement by their interpretation of the Cahan decision and also concerned that such legislation would raise serious constitutional questions, strongly opposed such legislation.

In a special message to the Legislature of February 28, 1961, Governor Brown made it clear that he would veto any legislation in whatever form that impinges on the Constitutional protections in the area of search and seizure, specifically the repeal of the so-called 'Cahan case' rule.

Within four months of this defense of constitutional freedoms by Governor Brown, the United States Supreme Court on June 19, 1961, in the case of Mapp v Ohio, ruled that an unreasonable search and seizure constituted a violation of the due process of the federal constitution. The effect of the Mapp decision is to impose the Exclusionary Rule on all fifty states.

Had the 1961 Legislature attempted to nullify the Cahan decision, it would have been in violation of the United States Constitution even before the end of the 1961 legislative session.

The Informer Rule

One of the appellate court decisions which followed the Cahan decision established a rule requiring that the name of a police informer had to be disclosed where reasonable cause for the arrest, search and seizure was based solely on hearsay information from such a person.

In his February 28, 1961 message to the Legislature, Governor Brown requested legislation to relieve law enforcement from a strict enforcement of this rule.

Because narcotics violations are not usually reported to the police since the peddler and the addict are both engaged in illegal

activities, the narcotics officer must rely on tips from informers. To protect them from retribution, these informers are usually promised that their names will never be disclosed. In his message to the Legislature, Governor Brown called for legislation to allow law enforcement officers to obtain a search warrant without publicly disclosing the informer's identity.

Two months later on May 1, 1961, a decision almost identical to the proposal by Governor Brown was handed down by the California Supreme Court in People v. Keener, 55 Cal. 2d 714 at 723.

Governor Brown's defense of constitutional guarantees against unreasonable search and seizure were vindicated by the U. S. Supreme Court; his support of relief from the handicap on narcotics officers imposed by the rule requiring disclosure of the names of informants was answered by the California Supreme Court.

TEN YEAR SUMMARY OF LEADERSHIP IN THE WAR AGAINST NARCOTICS

Governor Brown's Record: As Attorney General

1951 — Led the fight to increase prison penalties for selling narcotics to a minor.

1953 — Gave full support to overall increase in prison terms for narcotics violations. Supported prohibition of probation or suspension of sentence for previous narcotics offender. Appointed the Attorney General's Citizen's Advisory Committee on Narcotics.

1954 — Gave full support and leadership to passage of legislation again increasing prison terms for peddling narcotics: five years to life for first offense; ten years to life for second offense.

1955 — Represented the prosecution in the Cahan case. Following the Supreme Court's decision, appointed a committee of law enforcement officials to prepare necessary revisions of laws of arrest and search warrants.

1956 — Distributed to all law enforcement agencies in California a legal summary to assist enforcement of law pursuant to Cahan decision.

1957 — Presented to the Legislature recommendations for revision of laws of arrest and search warrants based on Advisory Committee's study.

1958 — Between 1951 and 1958 added 82 narcotics agents to State Bureau of Narcotics Enforcement to assist police agencies throughout the state.

Governor Brown's Record: As Governor

1959 Successfully opposed efforts to weaken penalties for narcotics offenses.

Endorsed Health and Safety Code Section 11718, effect of which is to prevent a judge from ignoring a prior narcotics conviction so as to avoid the mandatory prison sentence for second offenders.

Supported and signed measure creating the Narcotics Treatment Control Project, through which over 60 percent of parolees chemically tested have been detected using narcotics; these cases had not yet been detected by police agencies.

1960 In March requested Adult Authority to take tougher look at every narcotics case; asked every law enforcement agency to supply full information on offender to Adult Authority.

On March 15 called on the President of the U. S. to convene a White House Conference on Narcotics so that the Governor could argue the case for stronger federal controls against the smuggling of narcotics across the border with Mexico.

Urged the 1960 Legislature to provide $120,000 to establish a special narcotics enforcement task force.

On March 15 created a Special Study Commission on Narcotics; instructed it to report by December, 1960 for 1961 action.

1961 See "Governor's 1961 Narcotics Program."